United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-7233

United States Court of Appeals
FOR THE SECOND CIRCUIT

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J. C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,

Plaintiffs-Appellees,

against

TEXACO INC.,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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New York, N. Y. 10038
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UNITED STATES COURT OF APPEALS
FILED
JUL 25 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE MOTLEY

Jury demand date:

71 CIV. 2751

(PAGE #2)

DATE	PROCEEDINGS	Date Order Judgment No
Jun22-71	Filed Complaint, Issue d Summons.	
J 1.14-71	Filed Stip and order that the time for deft. to answer complaint is ext. from 7-18-71 to 8-2-71. So Orde.ed. Cooper,J.	
Jul 23-71	Filed ANSWER of Texaco, Inc. to complaint.	
Jul 23-71	Filed Notice to take Depositions.	
Aug.31-71	Filed Notice of Motion re: Forbid taking of Depos. Ret. 9/9/71. by Plaintiff.	
Aug.31-71	Filed Memorandum of Law.	
Dec.2-71	Filed MEMO.END. on motion papers filed 8/31/71, Report of SpecialMaster Goettel of 11/23/71 is confirmed. Depositions will proceeed as outlined therein. So ordered. Gurfein, J.	
Dec.2-71	Filed REPORT AND RECOMMENDATIONS of U. S.Magistrate Gerard L. Goettal.	
Dec.8-71	Filed pltff's Affdvt. and notice of motion for Summary Judgment. Ret. 12-14-71.	
Dec.8-71	Filed pltff's Memorandum of Law in support of motion	
Dec.8-71	Filed Memorandum and order that since the failure of the pltffs to have so moved was a basis of the Special Master's Report, my endorsement confirming that report is hereby suspended. Pending determination of the pltffs' motion, the depositions sought by the deft. are stayed. If the pltffs' motion succeeds, the need for these depositions is obviated . If, however, their motion is ultimately denied, my endorsement of 12-2-71 shall be deemed to be reinstated immediately. So Ordered. Gurfein,J. M/N	
1/3/72	Filed Stip. and Order adjourning motion now ret. 1/4/72 to 1/25/72.	
Jan 21/72	Filed Affidavit of Wilbur Ball.	
Jan 21/72	Filed Deft's Replt to Pltff's Statement of Material Facts,& Deft's statement of Material Facts.	
Jan 21/72	Filed Affidavt in opposition to Pltff's motion for summary judgment	
Feb.7-72	Filed MEMORANDUM AND ORDER. The motion for summary judgment is denied. So ordered. MacMahon, J.(mailed notice).	
Mar 6.72	Filed Pltffs Notice of deposition	
Jul 17-72	Filed Notice of Motion re: Examination before trial, Ret.7/25/72(by pltff)	
Jul 24-72	Filed stipulation adjourning motion now ret. 7/25/72 to 8/22/72.	
Aug 16.72	Filed Dfts. Notice of Motion. Re: Dismiss complaint. ret.8/22/72.	
Aug 16.72	Filed Dft's Memorandum of law in support of its cross motion & in opposition to pltffs. motion.	
Aug 30.72	Filed Affidavit in opposition to the motion of the dft. by Ned E. Phillips.	
Aug 8-72	Filed MEMO-END. on motion dtd 7-17-72. Motion of pltff to take deposition of John McCarthy and to require him to produce payroll records described in the motion is hereby granted. John McCarthy is to appear for the taking of his deposition on 1-7-73 and is to bring with him the described documents. (m) MOTLEY,J.	
Aug.8-72	Filed MEMO-END. on motion dtd 4-16-72. The deft is directed to take the depositions of the deputy comm. of the U.S. Part of New Orleans, Wilber Ball, 1-3-73 and the deposition of the Union Representative by the same date. Thereafter the Original rule etc. MOTLEY,J. (m)	
Dec.13-72	Filed defts Notice to take depositions.	
Dec.18-72	Filed defts Notice of taking deposition.	
Oct. 1-73	Filed memo endorsed on deft's answer filed 7-23-71- the parties are directed to report to Magistrate Jacobs on this data for assignment to a magistrate who will attempt to settle the case and if the case cannot be settled the magistrate will supervise submission and preparation of pre-trial memorandum & order. So ordered MOTLEY, J. m/n	
Aug. 29-74	Filed Consent and pre-trial order. MOTLEY, J.	

(CONT'D — PAGE #3)

Docket Entries

CIVIL DOCKET (PAGE # 3) MOTLEY, J.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED I ENCLUNEW RETURNS
Oct. 3-74	Filed deft's affdvt. of James S. McMahon, Jr, and notice of motion for an order that the pre-trial order heretofore filed be deemed amended etc. as indicated. Ret. 10-15-74.	
Oct. 8-74	Filed memo endorsed on motion filed 10-3-74. As stated, the within motion to amend the pretrial order is denied. So ordered- MOTLEY, J. (m/n)	70
Oct.23-74	Filed COPY of certificate On behalf of this court and pursuant to Sec.2403, Ti.28, U.S.C. I hereby certify that in this case there is drawn in question the constitutionality of Sec.594, Ti.46, U.S.C.an Act affecting the public interest.....Edelstein, Ch.J.	
Oct. 29-74	Before MOTLEY, J. non-Jury trial begun and concluded. Judge's decision for pltff. on the issue of statutory wages. Remaining issues to be resolved after submission of additional papers.	
Nov. 15-74	Filed pltffs' post trial memorandum on issues of pre-judgment interest, penalty wages and counsel fees.	
Nov. 15-74	Filed pltffs' affdvt. of Ned R. Phillips in support of application for counsel fees.	
Nov 15-74	Filed pltffs' proposed findings of fact and conclusions of law.	
Dec. 20-74	Filed Opinion # 41606- this is an action by 32 seamen to recover one month's wages from their employer, plus penalty wages of two days' wages for each day payment has been delayed, prejudgment interest on the amount recovered, and counsel fees.For the reasons stated- pltffs. are entitled, in addition to wages recived for the period 1-6 to 21,1971, to compensation equal to one month's wages. The court awards counsel fees of $5,000.00. Submit order on five days' notice. MOTLEY, J. (m/n)	
Jan. 14-75	Filed notice of settlement.	
Jan. 14-75	Filed Order & Judgment # 75,055- ordered that pltffs. recover of deft. one month's wages together with interest at 6% on each said amount compounded from 1-21-71 through 12-20-74 as herein set forth as indicated- that pltffs. recover of deft. the sum of $5,000. as counsel fees- that the cause of action under 46 U.S.C. Sec. 596 be and the same is hereby dismissed. MOTLEY, J. Judgment entered 1-15-75. Clerk (m/n)	
Jan. 24-75	Filed deft's affdvt. of James S. McMahon, Jr. and notice of motion for an order for a new trial and amended additional findings of fact and conclusion of law.	
Jan. 24-75	Filed deft's memorandum of law in suppert of its motion for a new trial and amended findings of fact and conclusions of law.	
	(CONT'D — PAGE #4 — OTHER SIDE)	

P. C. 110

Docket Entries

(PAGE # 4)

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Feb. 3-75	Filed pltffs' memorandum in opposition to motion for new trial or amendment of finding of facts and conclusions of law.	
March 4-75	Filed memo endorsed on motion filed 1-24-75. The within motion made by deft. for an order amending the findings or in the alternative for a new trial and for a stay of proceeding pending dispositions of the motion is denied. So ordered- MOTLEY, J. (m/n)	
Mar. 21-75	Filed Bill of Costs, taxed in the sum of $ 314. 61, in favor of all pltts., on Judgment # 75,055.	
Mar. 31-75	Filed supersedeas bond in the sum of $26,487.55 for undertaking of appeal.	
Mar. 31-75	Filed deft's notice of appeal from Order and Judgment dated 1-13-75 Copy to: Abraham E. Freedman, Esq. Entered 4-1-75	
Apr. 30-75	Filed notice that the record on appeal has been certified and transmitted to the USCA on 4-30-75.	
Apr. 29-75	Filed Affidavit of McMahon in Opposition to plaintiff's motion(filed Aug 31-71) for protective order.	
Apr. 29-75	Filed Defendant's Memorandum in opposition to plaintiff's motion (filed Aug 31-71) for protective order.	
Apr. 29-75	Filed Defendant's Post Trial Memorandum of Law.	
Apr. 29-75	Filed transcripts of record of proceedings dtd: Nov. 29-76.	

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,

Plaintiffs,

-against-

TEXACO, INC.

Defendant.

71 Civ.

COMPLAINT

ACTION BY SEAMEN WITHOUT PREPAYMENT OF COSTS

----------x

Plaintiffs , complaining of the defendant, by their attorney Abraham E. Freedman, respectfully allege upon information and belief:

FIRST: This action arises under the federal statutes governing suits in admiralty and is a maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

SECOND: At all the times hereinafter mentioned, defen-

dant was and still is a corporation engaged in the steamship business with its principal office and place of business in the Borough of Manhattan, City and State of New York.

THIRD: Plaintiffs are seamen in the United States Merchant Marine.

FOURTH: The jurisdiction of this Court arises under 46 U.S.C. Section 694.

FIFTH: At all times relevant hereto, defendant owned, operated and controlled the S. S. Texaco Illinois engaged in domestic and foreign commerce.

SIXTH: On or about the 6th day of January 1971, plaintiff's signed foreign articles before the United States Shipping Commissioner for the port of Miami, Florida in the capacities and monthly rates of wages hereinafter set forth:

Plaintiff's	Capacity	Monthly Wages
Earl B. Lewis	Boatswain	$672.43
Herbert D. Parsons	Quartermaster	516.14
Robert J.C. Murray	Quartermaster	516.14
Ruthven H. Lee	Quartermaster	516.14
Clarence T. Chladek	Able bodied seaman	504.41
Robert C. Rich	Able bodied seaman	504.41
Harry L. Davis	Able bodied seaman	504.41
"O" "C" Smith	Ordinary seaman	399.78
Kenneth Taylor	Ordinary seaman	399.78
Francis C. Kopas	Deck Maintenance	573.28
James H. Richmond,Jr.	Deck Maintenance	573.28
Culver Q. Holt	Electrician	771.10
Willie P. Jacquet	1st Pumpman	705.06
Anthony Alves	2nd Pumpman/MM	705.06
Albert F. Ryan	Oiler	554.73
John Kardos	Oiler	554.73

Plaintiff's	Capacity	Monthly Wages
Timothy J. O'Donovan	Oiler	554.73
Martin J. Urban	Chief Wiper	554.73
Louis G. Fontenot	Fireman-Watertender	554.73
Jacques H. Blanchard	Fireman-Watertender	554.73
Robert O. Medlock	Fireman-Watertender	554.73
Monico Davis	Wiper	463.05
Athens Walker	Wiper	463.05
Joseph A. Baron	Wiper	463.05
James Melvin	Chief Steward	675.22
Joe W. Thrower	Chief Cook	606.01
Junious McCall	2nd Cook & Baker	524.74
Harold F. McLean	Galleyman	396.97
Joseph H. Boland	Officers Mess	386.44
Thomas W.Chastain,Jr.	Crew Mess	386.44
Philip Auster	Utility	386.44
Maurice C. Leblanc	Utility	386.44

SEVENTH: The above mentioned shipping articles provided for a voyage from "...the Port of Port Everglades, Florida, to one or more ports in the Gulf and/or Caribbean and Panama and thence to one or more ports on the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not exceeding (90) days."

EIGHTH: In breach of and in violation of the terms of the shipping articles set forth hereinabove said vessel did not go to a final port of discharge on the Pacific Coast of the United States and in further breach and violation of the aforesaid articles the plaintiff's were discharged before plaintiffs earned one months wages.

NINTH: By reason of plaintiffs' discharge after having signed an agreement before the commencement of the voyage, and before one months wages were earned, and in breach of the aforesaid agreement, without fault on their part to justify such discharge, and without their consent, plaintiffs are each entitled to receive and hereby make claim for a sum equal to one months wages as compensation under U.S. revised statutes, Section 4527, 46 U.S.C. 594.

TENTH: Plaintiffs have duly demanded to be paid the one months wages as aforesaid and same has been refused by defendant obligating plaintiffs to retain counsel and incur costs in order to prosecute this action.

ELEVENTH: Said refusal by defendants to pay the one months wages as aforesaid was arbitrary and without justification.

TWELFTH: All and singular, the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

WHEREFORE, the plaintiffs demand judgment against the defendant for the sum of one months wages as hereinabove set forth for each plaintiff; two days pay for each and every day during which payment is delayed beyond the date same was

due; counsel fees, interest and costs and such other and further relief as to the Court may seem just and proper in the premises.

Dated: New York, N.Y.
June 10, 1971

ABRAHAM E. FREEDMAN

By _____
Attorney for Plaintiff
Office & P.O. Address
36 Seventh Avenue
New York, N.Y. 10011

ANSWER TO COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O""C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN: JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,

Plaintiffs,

-against-

TEXACO, INC.,

Defendant.

71 Civ. 2751

ANSWER TO COMPLAINT

- -x

Defendant, Texaco, Inc., by its attorneys, Bigham Englar Jones & Houston, answering plaintiffs' complaint states:

I. Denies that it has any knowledge or information sufficient to form a belief as to any of the allegations contained in the Paragraphs of the complaint designated "FIRST", "THIRD" and "FOURTH".

II. Denies each and every allegation contained

in the Paragraph of the complaint designated "EIGHTH", "NINTH", "TENTH", "ELEVENTH" and "TWELFTH".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

III. That plaintiffs herein agreed to termination of the foreign articles upon mutual consent and were offered and received immediate re-employment by defendant herein.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

IV. That plaintiffs by agreeing to termination of the said foreign articles upon mutual consent and accepting immediate re-employment from defendant herein waived any rights they may have had under 46 U.S.C. §594.

WHEREFORE, defendant demands that the complaint herein be dismissed together with costs and disbursements.

BIGHAM ENGLAR JONES & HOUSTON

BY: JOHN L. QUINLAN
JOHN L. QUINLAN
A Member of the Firm
Attorneys for Defendant
Office & P. O. Address
99 John Street
New York, New York 10038

TO: ABRAHAM E. FREEDMAN
Attorney for Plaintiffs
Office & P. O. Address
36 Seventh Avenue
New York, New York 10011

A 11

MOTION FOR PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,

Plaintiffs

-against-

TEXACO, INC.,

Defendant

MOTION FOR PROTECTIVE ORDER

TO: BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for Defendant
99 John Street
New York, N.Y. 10038

S I R S:

PLEASE TAKE NOTICE that upon the affidavit of Ned R. Phillips, duly verified on the 30th day of August, 1971, and upon all of the prior pleadings and proceedings heretofore had herein, plaintiff will move this Court in Room 506 of the United States Courthouse, Foley Square, New York, New York, on the 9th day of

Motion for Protective Order

September, 1971, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an Order forbidding the taking of the depositions of the thirty-two (32) plaintiffs herein pursuant to the Notice of Examination served by defendant herein, on the ground that said examinations are sought for the sole purpose of annoying and oppressing the plaintiffs herein and placing an undue burden and expense upon them, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: New York, N.Y.
August 30, 1971

Yours, etc.,

ABRAHAM E. FREEDMAN

By _____
Attorney for Plaintiffs
36 Seventh Avenue
New York, N.Y. 10011

AFFIDAVIT OF NED R. PHILLIPS IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,	71 Civ. 2751
Plaintiffs	AFFIDAVIT
-against-	
TEXACO, INC.,	
Defendant	

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

NED R. PHILLIPS, being duly sworn, deposes and says:

1. I am an attorney at law associated with the firm of Abraham E. Freedman, counsel for the plaintiffs herein, and am fully acquainted with all of the prior pleadings and proceedings heretofore had herein.

2. This affidavit is submitted in support of plaintiff's motion for a protective order forbidding the taking of the

depositions of the thirty-two (32) plaintiffs herein on the ground that the sole purpose of the notice of depositions herein is to annoy, harass, and oppress the plaintiffs, and to cause them undue burden and expense.

3. This is an action by thirty-two (32) seaman plaintiffs for the statutory remedy of 30 days' wages pursuant to 46 U.S.C., 594, arising as a result of breach of articles by defendant herein.

4. It is admitted in defendant's answer that on or about January 6, 1971, the abovenamed plaintiffs signed foreign articles before the United States Shipping Commissioner for the Port of Miami, Florida, which provided for a voyage from "... the Port of Port Everglades, Florida, to one or more ports in the Gulf and/or Caribbean and Panama and thence to one or more ports on the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not exceeding (90) days."

5. The names of the plaintiffs, their respective capacities aboard the vessel and their respective monthly rates of wages are also conceded by the defendant as alleged in paragraph Sixth of the complaint herein.

(A copy of the complaint is annexed hereto, made part hereof, marked Exhibit "1".)

6. The vessel did not go to a port of discharge on the Pacific Coast of the United States.

7. On January 21, 1971, sixteen days after signing the

aforesaid shipping articles, the plaintiffs were discharged in Taft, Ascencion Parish, Louisiana, a port in the Gulf of Mexico. Many of theplaintiffs reside in the State of Texas, and the others are scattered through other states of the union. Clearly, it would be a tremendous expense for the plaintiffs to come to New York for the purpose of this examination before trial.

8. Although the complaint is for a statutory violation covering the period January 6 through January, 1971, and ultimately will turn upon the construction of the statute, defendant, nevertheless, in its notice of examination before trial, requires that the plaintiff produce at said depositions "... all documents, reports, correspondence, papers, writings, seaman's license and discharge books for the past 3 years...". Assuming, arguendo, that it is remotely possible to conceive of a genuine issue of fact in this case it is patently obvious that the service of the seamen, their correspondence, their documents, their writings, for 3 years prior to the voyage in question, is totally irrelevant and cannot conceivably lead to any evidence and is patently intended to annoy, harass, embarass, and oppress the plaintiffs herein.

9. Deponent telephoned counsel for the defendant, in an endeavor to resolve the issues raised by this notice of deposition. Counsel for defendant stated that one of the purposes of the examination was to establish that the plaintiffs agreed to termination of the foreign articles upon mutual consent, and were offered and received immediate re-employment by defendant, as alleged in the

first affirmative defense set forth in the answer herein. Deponent suggested that this was not a matter that need be established by requiring thirty-two seamen to leave their respective employments, incur greater loss of wages, and additionally incur the expenses of traveling to New York, when these questions could be resolved simply by producing the shipping articles which would indicate the terms of sign-off, or, in the alternative, if defendant claims to have additional documents relating to the alleged mutual consent, upon production thereof and establishment of their veracity plaintiffs would admit to their authenticity.

10. It was further suggested to counsel that rather than engage in this enormous project of gathering thirty-two seamen from the seven seas, it serve upon the plaintiff requests to admit or requests for stipulations of fact, which would establish its purported affirmative defenses, and, reserve the question of depositions to some future date in the event that the stipulations were unsatisfactory or that plaintiffs refused to admit any relevant material facts.

The abovementioned suggestions of counsel were summarily rejected by defendant.

12. It is obvious that the expense, inconvenience, and burden of requiring thirty-two seamen plaintiffs to appear for depositions would be considerable. The expenses alone of their traveling to New York could conceivably negate whatever recovery they might ultimately achieve in the event that they are successful

in t is litigation. It is equally evident that if the suggestions men' loned hereinabove are followed, and defendant obtains the legal admissions it seeks and can authenticate, there would be no need for the tremendous inconvenience and expense involved in these depositions.

WHEREFORE, deponent respectfully prays that the Court enter an Order herein forbidding the taking of the depositions of the plaintiffs herein, and for such other and further relief as to the Court may seem just and proper in the premises.

Ned R. Phillips

Sworn to before me this
30th day of August, 1971

MARJORIE JOHNSON, NOTARY PUBLIC
STATE OF NEW YORK NO. 41-1983425
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES MARCH 30, 1972

AFFIDAVIT OF JAMES S. MC MAHON, JR. IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVIS, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,	71 Civ. 2751
Plaintiffs,	AFFIDAVIT IN OPPOSITION
-against-	
TEXACO, INC.,	
Defendant.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES S. McMAHON, JR., being duly sworn, deposes and says:

That he is an attorney duly admitted to practice in this Court and associated with the firm of Bigham Englar Jones & Houston, attorneys for defendant, Texaco, Inc.

This affidavit is submitted in opposition to

plaintiffs' motion for a protective order forbidding the taking of the oral depositions of the thirty-two plaintiffs herein.

As stated in the supporting affidavit of plaintiffs' counsel, this is an action instituted by the thirty-two unlicensed crewmembers of the "TEXACO ILLINOIS" as the result of an alleged breach of shipping articles by defendant in January, 1970. The crewmembers signed foreign shipping articles for a voyage commencing at Fort Everglades Florida on January 6, 1970. After commencement of the voyage, the vessel was diverted back to the United States where it arrived at Taft, Louisiana on January 21, 1971. The articles were closed at that port. No crewmember was discharged from employment by Texaco and no sum of money in wages was lost by any of the crew. The unlicensed crew, all the plaintiffs herein, remained aboard the vessel and continued at the same rate of pay as they had received under the shipping articles. Furthermore, the aforesaid shipping articles were closed without any objection whatsoever being made by any one of these crewmembers or their union representative who was also aboard the ship at the time of the sign-off to any officers of the vessel or to the assistant United States Shipping Commissioner also present aboard the vessel and in charge of the termination of the articles for the Government.

No objection to the termination of these articles was noted upon the articles by the assistant Shipping Commissioner. Your deponent has discussed this matter with the Commissioner who terminated the articles and was personally advised that no objection to their termination was made by any of these plaintiffs or their union representative at any time to him.

The statute (46 U.S.C. §594) pursuant to which plaintiffs have commenced the instant action provides that a seaman under foreign shipping articles is entitled to one months wages in addition to wages earned when he is discharged before the commencement of the voyage or before one months wages are earned so long as the discharge is without his consent. Additionally there are reported cases under this section holding to the effect that a seaman may waive any right he may have under this section by acceptance by him of a new employment obtained for him by the owner which is equivalent to the one from which he was discharged.

It is Texaco's contention herein that these crewmember plaintiffs both participated in the termination of these articles upon consent and furthermore waived any rights they may have held under this section, assuming arguendo there was no consent and there is a discharge, by continuing in the employ of Texaco without delay

aboard the same vessel in their same respective ratings and at no change in pay scale.

Plaintiffs counsel's supporting affidavit contends that the purpose of the Notice to Take the Depositions of each of these individual crewmembers was merely to harass and oppress the plaintiffs. It is doubtful whether this objection would have been lodged had there been only one plaintiff. However, their counsel apparently contends that because there are thirty-two plaintiffs, there would be a tremendous expense in compelling the plaintiffs to come to New York, It would certainly appear that any such agreement as to expense can be well countered by the contention that Texaco is herein exposed to thirty-two different recoveries.

The question also comes to mind as to why this suit was instituted in New York. There seems to be no connection whatsoever with this forum except for the fact that Texaco maintains an office and place of business in New York. Its center for marine operations is Port Arthur, Texas and all the events alleged in the complaint occurred in the Texas, Louisiana area. Furthermore, by and large, the vast majority of this crew, as is admitted in moving counsel's affidavit, reside in the Texas, Louisiana area. Additionally, the assistant Shipping Commissioner and upon information and belief, the union

patrolman or other union representative who were aboard the vessel when the articles were closed both work out of and apparently reside in the area of New Orleans, Louisiana. Of course, as previously stated the articles were closed in the New Orleans area having originally been opened only a short geographic distance away in Port Everglades, Florida. In any event, without barely a thread of connection with this forum, this suit was nevertheless instituted here. Now the plaintiffs come complaining that it would be expensive to come here.

The heart of the problem however is the need for the oral deposition viz a viz some other procedural remedies such as written interrogatories, stipulations of fact or requests to admit as are suggested by plaintiffs' counsel. Each and every action of these plaintiffs leading up to and during the subject sign-off as well as each and every conversation these plaintiffs had with their uion representatives aboard the vessel as well as with the officers of the vessel and the Shipping Commisioner then present are vital to the issue of consent to the sign-off. Additionally the facts and circumstances of each crewmember remaining in the employ of Texaco aboard the same vessel in the same capacity at the same rate of pay is also vital to this case on the issue of waiver. It is well known that written questions can be no

substitute for the development of the entire matter upon oral deposition. Counsel in his affidavit in support of plaintiffs' motion contends that as this is a statutory matter, there is no genuine issue of fact. If this contention is true then there is no basis for this lawsuit inasmuch as the closing of the articles was clearly upon the consent of the crewmembers. Your deponent has personally viewed the shipping articles on file in the Shipping Commissioner's office in New Orleans and there clearly is no objection to this sign-off noted thereon. Furthermore in personally discussing the events of this sign-off with the assistant Shipping Commissioner, who actually participated in the sign-off, your deponent was advised that no objections to it were made to him and if objections had been made, such objections would have been noted on the articles and a statement as to the objections would have been taken by him. Thus what this entire matter comes down to is what each and every individual crewmember will claim he said and did on the occasion of the sign-off and in the time preceding. Certainly defendant is entitled to discovery as to this and proper discovery of this nature can only be had through each crewmembers' version of what happened.

Quite frankly it would be most difficult for your deponent to even attempt to frame written interrogatories,

requests for admissions or stipulations of fact. Having reviewed the original of the subject shipping articles as well as having discussed this matter with the assistant Shipping Commissioner and ship's officers, your deponent cannot conceive of how these crewmembers will complain as it is expected in some form or other that they will claim that they objected to the termination of the articles.

WHEREFORE, it is respectfully requested that plaintiffs' motion for a protective order be in all respects denied and that plaintiffs be directed to personally appear in this forum for the taking of their depositions upon oral examination and that defendant have such other and further relief as the justice of the cause may require.

s/
JAMES S. McMAHON, JR.

Sworn to before me this
16 day of September, 1971.

FRANCIS I. [illegible]
NOTARY PUBLIC [illegible]

Notary Public
[illegible] filed in [illegible]
& [illegible]
Commission [illegible]

A 25

ORDER ENDORSED ON MOTION FOR PROTECTIVE ORDER,
GURFEIN, U.S.D.J.

REFERRED TO MAGISTRATE David J. Dolinger

ROOM 1105

TO HEAR AND REPORT.

SO ORDERED.

M. Gurfein

U. S. D. J.

Request of the Special Master, Miss Ida Klaus, and Leonard L. Loeb for clarification. Depositions could proceed in California.

Granted.

M. Gurfein USDJ

Dec 1971

MICROFILM
DEC 2 1971

U.S. DISTRICT COURT
FILED
DEC 2 1971
S. D. OF N. Y.

MAGISTRATE'S REPORT AND RECOMMENDATIONS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al, Plaintiffs, - against - TEXACO, INC., Defendants.	71 Civ. 2751 Judge Kaufman REPORT AND RECOMMENDATIONS

This is an action by 32 seamen against their employer, Texaco, Inc. Defendant has served a notice of deposition for all 32 plaintiffs, and counsel for plaintiffs has moved for a protective order forbidding the taking of these depositions.

On or about January 6, 1971, these plaintiffs signed foreign articles in Florida before a shipping commissioner for a voyage to the Carribean and Panama and then on to West Coast ports of the continental United States. Sixteen days later, however, the foreign voyage was cancelled, the vessel returned to Louisiana, and the articles were closed. The plaintiffs, however, remained on the same vessel, at the same pay, and (apparently) continued domestic coastwise cruising.

It is the contention of the plaintiffs that, having been "discharged" before one month's wages were earned, through no fault of their own, they are entitled to receive an additional sum equal to one month's wages as compensation under Title 46 U.S.C. § 594. The pertinent part of the statute involved provides that:

> "Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation ..." (emphasis added)

It is the position of the defendant that none of the plaintiffs objected to the termination of their shipping articles and since none of them lost wages and all were continued as members of the same crew, no recovery under the aforesaid statute is warranted. The issue, as can be seen, is a fairly narrow one and, primarily, one of law. However, a factual issue exists: whether or not the various plaintiffs "consented" to this change in their shipping orders.

The position of the parties with respect to the depositions are at opposite extremes. Plaintiffs' counsel takes the position that they are entitled to a recovery as a matter of law even acknowledging the facts to be as contended by the defendant. They claim that the noticed depositions are no more than harrassment since the costs of transporting the plaintiffs, most of whom reside in the Gulf of Mexico area, might exceed the recovery sought in this action. Defendant, on the other hand, points out that it must establish consent and that to do so it needs to examine each of the plaintiffs individually. They also assert the usual rule that defendants are entitled to examine plaintiffs in the forum of their choice (absent special circumstances showing undue hardships) citing O'Hara v. United States Lines Co, 164 F. Supp. 549 (S.D.N.Y. 1958).

This motion is capable of practical disposition. If plaintiffs' contention that they are entitled to judgment as a matter of law on the pleadings is correct, they could have so moved. While they have repeatedly maintained that

such a motion was going to be made, to date none has.* On the other hand, undue hardship exists to some degree since no real need is apparent for bringing all of these plaintiffs to New York at the present time. While not truly a class action, this case has some similar characteristics which probably eliminates the necessity of deposing all of the plaintiffs.

Most of the plaintiffs (seventeen out of thirty-two) are still employed by the defendant. Indeed, fifteen of the seventeen are still aboard the same vessel, the S.S. Texaco Illinois. These Texaco vessels operate along the East Coast of the United States regularly. The Illinois is presently scheduled to be in New England. The Texaco vessels come into the port of New York on occassions. Consequently, the defendant should be allowed to take the depositions of any plaintiffs who arrive in the port of New York, or within 100 miles from New York (i.e. ports in the States of Pennsylvania, New Jersey, and Connecticut).

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* They were perhaps hoping for some help from an appeal that was pending in the case of Fowles et al v. American Export Lines, Inc., in which they asserted an absolute right to recovery under 46 U.S.C.§594 despite injury to the vessel. The recent opinion of the Second Circuit (Slip Opinion 157, September 1971 term, decided November 3, 1971) gave them no assistance in that respect.

In the event that the Illinois comes into a port other than the port of New York, but within 100 miles of New York, the plaintiffs should have the alternative of paying the travel costs of defendant's counsel to the location of the vessel, so that the fifteen plaintiffs may be deposed at once without unnecessary expense. Since these plaintiffs are in the employ of the defendant, defendant will be well aware of their movements and able to notify plaintiffs' counsel when they will be in a suitable geographic location to be deposed.

Three months from the date of the court's order, the defendant should be allowed to make further application with respect to depositions. If the Illinois has not been within 100 miles of New York during that period, the plaintiffs should then arrange to transport the three plaintiffs who served as the union representatives for their departments to New York for the taking of their depositions.

When the foregoing procedures have been completed, either by deposing the fifteen plaintiffs on the Illinois,

or by taking the three union representatives depositions, the defendant may then make further application for additional depositions if it deems it necessary. At that time, based upon the evidence obtained in the depositions, the Court will then be in a better position to determine whether oral depositions of each of the plaintiffs are truly necessary, or whether written interrogatories of the remaining plaintiffs or admissions of fact might not suffice.

In the foregoing manner the defendant's right to discovery can be accomodated without undue hardship to the plaintiffs.

Respectfully,

Gerard L. Goettel
United States Magistrate

DATED: New York, New York
November 23, 1971

ORDER SUSPENDING ORDER CONFIRMING MAGISTRATE'S REPORT, GURFEIN, U.S.D.J.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS, et al,

Plaintiffs,

-against-

TEXACO, Inc.,

Defendant.

----------x

GURFEIN, D. J.

Since confirming on December 2, 1971 the report of the Special Master, I have been informed that a motion for summary judgment, returnable on December 14, 1971, has been made by the plaintiffs.

Since the failure of the plaintiffs to have so moved was a basis of the Special Master's Report, my endorsement confirming that report is hereby suspended. See 6A Moore's Federal Practice ¶59.12[4]. Pending determination of the plaintiffs' motion, the depositions sought by the defendant are stayed. If the plaintiffs' motion succeeds, the need for these depositions is obviated. If, however, their motion is ultimately denied, my endorsement of December 2, 1971 shall be deemed to be reinstated immediately.

SO ORDERED.

U.S.D.J.

Dated: December 3, 1971.

EXCEPTIONS TO MAGISTRATE'S REPORT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al,	:	71 Civ. 2751
Plaintiffs	:	
-against-	:	EXCEPTIONS TO MAGISTRATE'S REPORT
TEXACO, INC.,	:	
Defendant	:	

Plaintiffs respectfully except to the report of the Magistrate submitted to the Court on the motion to quash the taking of depositions of 32 seamen plaintiffs on the following grounds:

1. There are no genuine issues of fact herein and discovery can only be for the sole purpose of harassing plaintiffs.

2. The Magistrate having found that the only factual issue which exists is "whether or not the various plaintiffs 'consented' to this change in their shipping orders" (Magistrate's report, p2) written interrogatories would be adequate.

3. Even if there were any basis for discovery by deposition, it would, by defendant's own admissions, relate to matters upon which it bears the burden of proof, therefore all expenses of such depositions should be borne by defendant.

Argument

POINT I

It is submitted that no legal justification exists for the taking of any depositions in this case.

A copy of plaintiffs' affidavit, with exhibits and memorandum of law in support of their motion for summary judgment, returnable on December 14, 1971, is annexed hereto and made part hereof.

It is further suggested to the Court that any action on the Magistrate's report be deferred pending the determination of the motion for summary judgment, which, if granted, would moot the question before the Court.

POINT II

Assuming arguendo that there is an issue of fact as to whether or not plaintiffs consented to this change in their shipping orders, clearly this information can be developed by the use of interrogatories. It is plainly evident from the Magistrate's report that the taking of oral depositions will involve considerable expense, time, and inconvenience.

If the answers to written interrogatories should prove unsatisfactory, defendant would not be precluded from renewing its application to the court for oral depositions. Moore's Federal Practice, 2nd Ed., V.4, Sec. 26.71.

POINT III

The affidavit of defendant clearly indicates that the sole purpose of the depositions is to establish the alleged consent of plaintiffs to the change of shipping orders by reason of their alleged failure to object thereto after the fact at time of payoff.

Exceptions to Magistrate's Report

The Magistrate has focused upon the question of consent as the sole factual issue in the case.

Assuming arguendo that there is such a factual issue, the burden of proof thereof is upon defendant. Garrett v. Moore McCormack, 317 U.S. 239 (1942); Gonzales v. Isthmian S.S. Co., 1958 AMC 97 (E.D. Pa. 1957).

The question of expenses in connection with depositions is one addressed to the sound discretion of the court. Moore's Federal Practice, 2nd Ed., V.4, Sec. 26.77. Generally, the party seeking the deposition bears the travel costs. Rule 5, Civil Rules for the Southern and Eastern District of New York.

Normally a party will be required to bear his own travel expenses when his examination before trial has been noticed by his adversary. However, in exceptional cases the other party may be required to pay travel expenses. Lawson v. Mathiasen's Tanker Industries, 24 F.R. Serv. 30b.41, Case 1 (E.D. Pa. 1957), 1957 A.M.C. 2174.

It is submitted that the instant case presents the type of exceptional and impelling circumstances contemplated by the Court in Lawson, supra, in that defendant seeks these depositions for the purpose of obtaining testimony to sustain its burden of proof. Plaintiffs should not be required to make out defendant's case at their own expense.

Conclusion

Wherefore plaintiffs pray that the report of the Magistrate be overruled and the court enter an order herein quashing the notice of deposition of plaintiffs, or, in the alternative, ordering that defendant proceed upon written interrogatories, or, in the alternative, direct that defendant pay all travel expenses incurred in connection with the taking of any depositions of plaintiffs herein.

Dated: New York, N.Y.
November 29, 1971

ABRAHAM E. FREEDMAN

By _____
Attorney for Plaintiffs
36 Seventh Avenue
New York, New York 10011

NOTICE OF MOTION FOR AN ORDER GRANTING SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS, et al., : 71 Civ. 2751

Plaintiffs :

-against- :

NOTICE OF MOTION

TEXACO, INC., :

Defendant :

----------x

TO: BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for Defendant
99 John Street
New York, N.Y. 10038

S I R S:

PLEASE TAKE NOTICE that upon the affidavit of Ned R. Phillips, Esq., duly verified on the 14th day of December, 1971, and upon all of the prior pleadings and proceedings heretofore had herein plaintiffs will move this Court in Room 506 of the United States Courthouse, Foley Square, New York, New York, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment for plaintiffs herein for the relief prayed for in the complaint on the ground that there is no genuine issue as to any material fact and that the plaintiff is entitled to judgment as a matter of law, and

for such other and further relief as may seem just and proper in the premises.

Dated: New York, N.Y.
November 29, 1971

Yours, etc.,
ABRAHAM E. FREEDMAN

By _____
Attorney for Plaintiffs
36 Seventh Avenue
New York, N.Y. 10011

AFFIDAVIT OF NED R. PHILLIPS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al	:	71 Civ. 2751
Plaintiffs	:	
-against-	:	AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
TEXACO, INC.,	:	
Defendant	:	

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

NED R. PHILLIPS, being duly sworn, deposes and says:

1. Deponent is an attorney at law associated with the office of Abraham E. Freedman, Esq., counsel for plaintiffs herein and is fully acquainted with all of the prior pleadings and proceedings heretofore had herein.

2. This affidavit is submitted in support of plaintiffs motion for summary judgment herein.

3. This is an action for the recovery of one month wages by each and every plaintiff brought pursuant to 46 U.S.C., Sec. 594, which provides that:

" S. 594 Right to wages in case of improper discharge

Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before

one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case of having been improperly discharged, recover such compensation as if it were wages duly earned. R.S. Sec. 4527."

4. Upon joinder of issue herein defendant admitted the following allegations of the complaint herein:

" SECOND: At all the times hereinafter mentioned, defendant was and still is a corporation engaged in the steamship business with its principal office and place of business in the Borough of Manhattan, City and State of New York.

FIFTH: At all times relevant hereto, defendant owned, operated and controlled the S.S. Texaco Illinois engaged in domestic and foreign commerce.

SIXTH: On or about the 6th day of January, 1971, plaintiffs signed foreign articles before the United States Shipping Commissioner for the port of Miami, Florida, in the capacities and monthly rates of wages hereinafter set forth:

Plaintiffs	Capacity	Monthly Wages
Earl B. Lewis	Boatswain	$672.43
Herbert D. Parsons	Quartermaster	516.14
Robert J.C. Murray	Quartermaster	516.14
Ruthven H. Lee	Quartermaster	516.14
Clarence T. Chladek	Able bodied seaman	504.41
Robert C. Arch	Able bodied seaman	504.41
Harry L. Davis	Able bodied seaman	504.41
"O" "C" Smith	Ordinary seaman	399.78
Kenneth Taylor	Ordinary seaman	399.78
Francis C. Kopas	Deck Maintenance	573.28

Plaintiffs	Capacity	Monthly Wages
James H. Richmond, Jr.	Deck Maintenance	573.28
Culver Q. Holt	Electrician	771.10
Willie P. Jacquet	1st Pumpman	705.06
Anthony Alves	2nd Pumpman/MM	705.06
Albert F. Ryan	Oiler	554.73
John Kardos	Oiler	554.73
Timothy J. O'Donovan	Oiler	554.73
Martin J. Urban	Chief Wiper	554.73
Louis G. Fontenot	Fireman-Watertender	554.73
Jacques H. Blanchard	Fireman-Watertender	554.73
Robert O. Medlock	Fireman-Watertender	554.73
Monico Davis	Wiper	463.05
Athens Walker	Wiper	463.05
Joseph A. Baron	Wiper	463.05
James Melvin	Chief Steward	675.22
Joe W. Thrower	Chief Cook	606.01
Junious McCall	2nd Cook & Baker	524.74
Harold F. McLean	Galleyman	396.97
Joseph H. Boland	Officers Mess	386.44
Thomas W. Chastain, Jr.	Crew Mess	386.44
Philip Auster	Utility	386.44
Maurice C. Leblanc	Utility	386.44

> SEVENTH: The above mentioned shipping articles provided for a voyage from "... the Port of Port Everglades, Florida, to one or more ports in the Gulf and/or Caribbean and Panama and thence to one or more ports on the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not exceeding (90) days."

(Copy of the answer is annexed hereto, marked Exhibit "A")

5. In an affidavit submitted in opposition to plaintiffs' motion for a protective order quashing the notice of taking oral depositions of the thirty-two plaintiffs herein, defendant made the following additional admission:

> "... The crewmembers signed foreign shipping articles for a voyage commencing at

Fort Everglades Florida on Jaunary 6, 1971. After commencement of the voyage, the vessel was diverted back to the United States where it arrived at Taft, Louisiana on January 21, 1971. The articles were closed at that port..."

(Copy of the affidavit is annexed hereto, made part hereof, marked Exhibit "B")

6. The act of diversion of the vessel and termination of the voyage was the unilateral decision of defendant.

7. Upon the foregoing undisputed facts plaintiffs are clearly entitled, as a matter of law, to summary judgment in their favor.

8. The fact that the seamen remained aboard the vessel and accepted their earned wages does not, as a matter of law, constitute consent to the unilateral termination of the voyage.

9. The only issue raised by the pleadings and affidavits is whether the admitted facts bring the plaintiffs within the protective ambit of the statute.

10. No other prayer for the relief requested herein has been made before this or any other court.

WHEREFORE, plaintiffs respectfully pray that the court grant summary judgment for plaintiffs awarding each of them one month's wages pursuant to 46 U.S.C., 594.

Ned R. Phillips

Sworn to before me this
29th day of November, 1971

AFFIDAVIT OF JAMES S. MC MAHON, JR. IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC, Plaintiffs, -against- TEXACO, INC., Defendant.	71 Civ. 2751 AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

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That he is an attorney duly admitted to practice in this Court and associated with the firm of Bigham Englar Jones & Houston, attorneys for defendant, Texaco, Inc.

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As stated in the supporting affidavit of plaintiffs' counsel, this is an action instituted by the thirty-two unlicensed crewmembers of the "TEXACO ILLINOIS" as the result of an alleged breach of shipping articles by defendant in January, 1970. The crewmembers signed foreign shipping articles for a voyage commencing at Fort Everglades Florida on January 6, 1971. After commencement of the voyage, the vessel was diverted back to the United States where it arrived at Taft, Louisiana on January 21, 1971. The articles were closed at that port. No crewmember was discharged from employment by Texaco and no sum of money in wages was lost by any of the crew. The unlicensed crew, all the plaintiffs herein, remained aboard the vessel and continued at the same rate of pay as they had received under the shipping articles. Furthermore, the aforesaid shipping articles were closed without any objection whatsoever being made by any one of these crewmembers or their union representative who was also aboard the ship at the time of the sign-off to any officers of the vessel or to the assistant United States Shipping Commissioner also present aboard the vessel and in charge of the termination of the articles for the Government.

No objection to the termination of these articles was noted upon the articles by the assistant Shipping Commissioner. Your deponent has discussed this matter with the Commissioner who terminated the articles and was personally advised that no objection to their termination was made by any of these plaintiffs or their union representative at any time to him.

The statute (46 U.S.C. §594) pursuant to which plaintiffs have commenced the instant action provides that a seaman under foreign shipping articles is entitled to one months wages in addition to wages earned when he is discharged before the commencement of the voyage or before one months wages are earned so long as the discharge is without his consent. Additionally there are reported cases under this section holding to the effect that a seaman may waive any right he may have under this section by acceptance by him of a new employment obtained for him by the owner which is equivalent to the one from which he was discharged.

It is Texaco's contention herein that these crewmember plaintiffs both participated in the termination of these articles upon consent and furthermore waived any rights they may have held under this section, assuming arguendo there was no consent and there is a discharge,

by continuing in the employ of Texaco without delay aboard the same vessel in their same respective ratings and at no change in pay scale.

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The question also comes to mind as to why this suit was instituted in New York. There seems to be no connection whatsoever with this forum except for the fact that Texaco maintains an office and place of business in New York. Its center for marine operations is Port Arthur, Texas and all the events alleged in the complaint occurred in the Texas, Louisiana area. Furthermore, by and large, the vast majority of this crew, as is admitted in moving counsel's affidavit, reside in the Texas, Louisiana area. Additionally, the assistant Shipping

Commissioner and upon information and belief, the union patrolman or other union representative who were aboard the vessel when the articles were closed both work out of and apparently reside in the area of New Orleans, Louisiana. Of course, as previously stated the articles were closed in the New Orleans area having originally been opened only a short geographic distance away in Port Everglades, Florida. In any event, without barely a thread of connection with this forum, this suit was nevertheless instituted here. Now the plaintiffs come complaining that it would be expensive to come here.

The heart of the problem however is the need for the oral deposition viz a viz some other procedural remedies such as written interrogatories, stipulations of fact or requests to admit as are suggested by plaintiffs' counsel. Each and every action of these plaintiffs leading up to and during the subject sign-off as well as each and every conversation these plaintiffs had with their uion representatives aboard the vessel as well as with the officers of the vessel and the Shipping Commisioner then present are vital to the issue of consent to the sign-off. Additionally the facts and circumstances of each crewmember remaining in the employ of Texaco aboard the same vessel in the same capacity at the same rate of pay is also vital to this case on the issue of

waiver. It is well known that written questions can be no substitute for the development of the entire matter upon oral deposition. Counsel in his affidavit in support of plaintiffs' motion contends that as this is a statutory matter, there is no genuine issue of fact. If this contention is true then there is no basis for this lawsuit inasmuch as the closing of the articles was clearly upon the consent of the crewmembers. Your deponent has personally viewed the shipping articles on file in the Shipping Commissioner's office in New Orleans and there clearly is no objection to this sign-off noted thereon. Furthermore in personally discussing the events of this sign-off with the assistant Shipping Commissioner, who actually participated in the sign-off, your deponent was advised that no objections to it were made to him and if objections had been made, such objections would have been noted on the articles and a statement as to the objections would have been taken by him. Thus what this entire matter comes down to is what each and every individual crewmember will claim he said and did on the occasion of the sign-off and in the time preceding. Certainly defendant is entitled to discovery as to this and proper discovery of this nature can only be had through each crewmembers' version of what happened.

Quite frankly it would be most difficult for your

deponent to even attempt to frame written interrogatories, requests for admissions or stipulations of fact. Having reviewed the original of the subject shipping articles as well as having discussed this matter with the assistant Shipping Commissioner and ship's officers, your deponent cannot conceive of how these crewmembers will complain as it is expected in some form or other that they will claim that they objected to the termination of the articles.

WHEREFORE, it is respectfully requested that plaintiffs' motion for a protective order be in all respects denied and that plaintiffs be directed to personally appear in this forum for the taking of their depositions upon oral examination and that defendant have such other and further relief as the justice of the cause may require.

S/
JAMES S. McMAHON, JR.

Sworn to before me this
)(day of September, 1971.

FRANCIS [illegible]
NOTARY PUBLIC [illegible]
[illegible]

Notary Public
[illegible] Expires March 30, 1972

AFFIDAVIT OF WILBUR BALL

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al Plaintiffs	:	CIVIL ACTION
	:	71-2751
VS.	:	
TEXACO, INC., Defendant	:	

A F F I D A V I T

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, a Notary Public in and for the Parish and State aforesaid, personally came and appeared:

WILBUR BALL

who, after being first duly sworn, did depose and say:

That I am an assistant to United States Shipping Commissioner Davidson whose offices are maintained in the Port of New Orleans, Louisiana. That as Deputy Shipping Commissioner I represented the United States Government at the termination of the shipping articles of the ss TEXACO ILLINOIS at Taft, Louisiana on January 21, 1971, and as such I was the governmental officer who signed the crew of the vessel off the articles. That at the time of the sign-off, a National Maritime Union Patrolman was aboard the vessel. He was a man named Marisco.

That thereafter the sign-off from the articles took place upon mutual consent as is noted on the face of the

discharge page of the articles. That no protest of any nature was made or related to me by any of the crew members or their patrolman-representative. If a protest had been made, it is standard procedure for me to make a notation of the protest on the discharge page of the shipping articles, together with the reasons therefor.

Wilbur Ball
WILBUR BALL

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 14th DAY
OF JANUARY, 1972.

John J. Broders
NOTARY PUBLIC

JOHN J. BRODERS
NOTARY PUBLIC
ORLEANS PARISH
LOUISIANA

PLAINTIFFS' NOTICE OF MOTION FOR AN ORDER GRANTING SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS, et al :

Plaintiffs :

-against- :

TEXACO, INC., :

Defendant :

----------x

71 Civ. 2751

NOTICE OF MOTION

TO: BIGHAM, ENGLAR, JONES & HOUSTON
Attorneys for Defendant
99 John Street
New York, N.Y. 10038

S I R S:

PLEASE TAKE NOTICE that upon the affidavit of Ned R. Phillips, Esq., duly verified on the 29th day of November, 1971, and upon all of the prior pleadings and proceedings heretofore had herein plaintiff will move this Court on the 14th day of December, 1971, in Room 506 of the United States Courthouse, Foley Square, New York, New York, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment for plaintiffs herein for the relief prayed for in the complaint on the ground that there is no genuine issue as to any material fact and that the plaintiff is entitled to judgment

as a matter of law, and for such other and further relief as may seem just and proper in the premises.

Dated: New York, N.Y.
November 29, 1971

Yours, etc.,

ABRAHAM E. FREEDMAN

By: _____
Attorney for Plaintiffs
36 Seventh Avenue
New York, N.Y. 10011

STATEMENT OF MATERIAL FACTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS, et al : 71 Civ. 2751

Plaintiffs :

-against- : STATEMENT OF MATERIAL FACTS

TEXACO, INC., :

Defendant :

----------x

The following is the Statement of Material Facts as to which movant contends there is no genuine issue to be tried pursuant to Rule 9(g) of the General Rules of this Court.

1) Defendant is a corporation engaged in the steamship business and owned, operated, and controlled the S. S. Texaco Illinois, engaged in domestic and foreign commerce.

2) On January 6, 1971, plaintiffs herein signed foreign shipping articles which provided for a voyage from "... the Port of Port Everglades, Florida, to one or more ports in the Gulf and/or Caribbean and Panama and thence to one or more ports on the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not exceeding (90) days."

3) The vessel did not make the voyage as set forth in the shipping articles.

4) After the commencement of the voyage and before one month's wages were earned the vessel was diverted back to the United States where it arrived at Taft, Louisiana, on January 21, 1971, where the articles were terminated and the voyage ended.

5) Upon termination of the shipping articles, the seamen received certificates of discharge.

6) Said termination of voyage and discharge was without any fault on the part of the seamen and without their consent to the change in the shipping orders.

Dated: New York, N.Y.
December 3, 1971

ABRAHAM E. FREEDMAN

By _____
Attorney for Plaintiffs
36 Seventh Avenue
New York, N.Y. 10011

DEFENDANT'S REPLY TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS AND DEFENDANT'S STATEMENT OF MATERIAL FACTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS, et al.,

Plaintiff,

- against -

TEXACO, INC.,

Defendant.

DEFENDANT'S REPLY TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS, AND DEFENDANT'S STATEMENT OF MATERIAL FACTS

71 Civ. 2751

----------x

Defendant, as and for its reply to plaintiff's statement of material facts pursuant to Rule 9G of the General Rules of this Court, states:

I. Defendant controverts item "5" of plaintiff's statement and contends that any discharges the plaintiffs herein may have received were solely discharges from their obligation under the shipping Articles for the particular voyage and were neither discharges from the vessel nor discharges from employment by the Company. Defendant controverts the entire statement contained in item "6" of plaintiff's statement of material facts.

DEFENDANT, AS AND FOR ITS STATEMENT OF MATERIAL FACTS PURSUANT TO RULE 9G, STATES:

II. That the plaintiff-seamen were never discharged from

the S.S. "TEXACO ILLINOIS" on or about January 6, 1971 and in fact continued in the employ of Texaco Inc. aboard said vessel at the same rate of pay.

III. Such continuation of employment by plaintiffs, as stated in "II" hereof, constituted, as a matter of law, a waiver of any rights said plaintiffs may have had pursuant to the applicable Statute (46 U.S.C. Sec. 594).

IV. Said termination of voyage and discharge of the seamen from their obligation under the shipping Articles was with the consent of said plaintiff-seamen.

Dated: New York, New York
January 19, 1972.

BIGHAM ENGLAR JONES & HOUSTON

By JOHN L. QUINLAN
A Member of the Firm
Attorneys for Defendant
Office & P. O. Address
99 JOhn Street
New York, New York 10038

AFFIDAVIT OF JAMES S. MC MAHON, JR. IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al,	:	71 Civ. 2751
Plaintiffs,	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
-against-	:	
TEXACO, INC.,	:	
Defendant.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES S. McMAHON, JR., being duly sworn deposes and says:

That he is an attorney duly admitted to practice in this Court and associated with the firm of BIGHAM ENGLAR JONES & HOUSTON, attorneys for defendant, Texaco, Inc. and as such is fully familiar with all the pleadings and proceedings heretofore had herein.

That this affidavit is submitted in opposition to plaintiffs' motion for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting summary judgment in favor of the plaintiffs herein. In support of their motion for summary judgment, plaintiffs have submitted merely a supporting affidavit of one of their attorneys, a

memorandum of law and a statement of alleged uncontested material facts pursuant to the requirements of Rule 9 (g) of the General Rules of this Court. At the outset it should be noted that no affidavits or sworn statements of any of the plaintiffs themselves have been submitted in support of the instant motion. This would seem to be a fatal defect to the granting of this motion in and of itself. Furthermore, as indicated by the accompanying statement submitted by defendant pursuant to the aforesaid Rule 9 (g), the defendant disputes plaintiffs' contention that no genuine issue of fact exists with reference to items "5" and "6" of plaintiffs' statement of material facts. The plaintiff seamen were never in actuality discharged from employment by defendant and furthermore, by their failure to object to the termination of the shipping articles, they clearly fail to meet one of the elements of the statute under which this suit has been brought (46 U.S.C. § 594), the element of consent. Texaco does not have the burden herein of proving lack of consent - it is the burden of the plaintiffs who seek to assert their rights under the statute to establish each and every element of it in order to carry their burden of proof. Consent is one of those elements.

Plaintiffs' counsel, in his supporting affidavit states that, the diversion of the vessel and termination

of the voyage was the unilateral decision of the defendant. While the diversion of the vessel may have been a unilateral act of the defendant, the termination of the voyage was not. The seamen participated in the termination of the voyage by signing off the shipping articles in the presence of an Assistant United States Shipping Commissioner without protest. It is undisputed that they could have protested or refused to sign-off the articles as is often done when disputes arise, for example, over wages, overtime, bonuses, etc. Furthermore, the seamen were apparently well counselled in their decision to participate in and consent to the termination of the articles. Plaintiffs did in fact delay the signing off of the articles until such a time as a representative of their union, the National Maritime Union, boarded the vessel and conducted a meeting with the plaintiffs. At the conclusion of that meeting, all members of the unlicensed crew, the plaintiffs herein, participated in signing off the articles without objection. An affidavit of the Assistant United States Shipping Commissioner who took part in the sign-off has been submitted herewith attesting to the foregoing facts.

The preceding has been a brief review of some of the facts and circumstances of this litigation. However, the major grounds warranting denial of this motion for summary judgment at this time is that it is unquestion-

ably premature. It is submitted from a reading of the cases turning upon the particular statute here in question, that there are a number of basic issues of fact which the defendant must first inquire into in order to meet the many assertations of the plaintiffs. As stated above, the lack of consent as an element of the statute must be pleaded and proven by plaintiffs. There has been no showing that plaintiffs themselves in any way objected to signing off the subject shipping articles. The bare conclusionary allegation of plaintiffs' counsel that plaintiffs, by signing off the articles did not consent to a discharge doesn't establish any fact as proven. It is defendant's position that such a sign-off is prima facie evidence of consent invalidating the seaman's right to recover under the statute. If plaintiffs wish to contend that they did in some manner object to the sign-off, defendant should have the right to inquire into this assertion by way of pre-trial discovery.

Furthermore, the act of signing off from the articles in itself by each individual crewmember constitutes a release and waiver of all future rights against defendant. While seemingly acknowledging that the articles do in fact constitute a release in their accompanying memorandum of law, plaintiffs nevertheless, fall back on the usual position that they did not understand the full consequences

of their act. This contention is not made by any crew-member in an affidavit and is merely asserted as a recital in their memorandum of law. This assertion in and of itself also requires that defendant have discovery in order to ascertain to what extent the seamen did understand their actions at sign-off.

Defendant has attempted to be diligent in proceeding with such discovery although to date, it has been frustrated in obtaining it. Defendant promptly noticed the taking of the plaintiffs' depositions. Plaintiffs' counsel then moved for a protective order vacating said notice. The motion was referred by Federal District Judge Gurfein to United States Magistrate Goettel to hear and report. A report was rendered that in essence recommended that the depositions take place in an orderly procedure as recommended by the Magistrate. A copy of Magistrate Goettel's recommendations are annexed hereto. It should parenthetically be noted in connection with Magistrate Goettel's report that defendant does not concur with the statement of the Magistrate contained on page "3" of his report that the burden is on the defendant to establish consent. The burden of proof to establish lack of consent as an element of the statute is on the plaintiffs and this burden never shifts even though the issue of consent has been pleaded by defendant in its answer as an

affirmative defense. Clearly, even the Magistrate immediately recognized that a factual issue exists as to plaintiffs' consent (see page "2" of U.S. Magistrate Goettel's report). In an order dated December 1, 1971, a copy of which is annexed hereto, Judge Gurfein confirmed the report and recommendations of Magistrate Goettel. However, thereafter and following an ex parte hearing to plaintiffs' counsel without notice to either defendant or its counsel, Judge Gurfein by order dated December 8, 1971 stayed his prior order of December 1, pending the outcome of the instant summary judgment motion. Thus, defendant has to date, been fully frustrated in meeting plaintiffs' bare conclusionary contentions on proofs relating to all the elements of the subject statute, particularly the issue of lack of consent. It clearly appears that the staying of discovery herein by reason of the pending summary judgment motion is literally "putting the cart before the horse." Defendant necessarily requires discovery in order to attempt to effectively meet any motion for summary judgment.

It seems clear that the allegations made by plaintiffs' counsel in his supporting affidavit other than those admitted by defendant are merely general conclusions of alleged facts and are not allegations of specific fact. The allegations, in effect do no more than restate the complaint. The Court, therefore, has insufficient specific

facts before it upon which it can decide summary judgment in plaintiffs' favor. For example, the mere allegation that consent under the applicable statute was lacking does not present any specific issue for determination by the Court.

Finally, it is uncontested that each and every plaintiff herein remained aboard defendant's "TEXACO ILLINOIS" in the same capacity and at the same rate of pay following the termination of the shipping articles. As reflected by the law of this Circuit in the accompanying memorandum, such continuation of employment would constitute a waiver of the crewmember's rights under the subject statute.

Wherefore, your deponent respectfully requests that this Honorable Court deny plaintiffs' motion for summary judgment in its entirety.

James S. McMahon, Jr.

JAMES S. McMAHON, JR.

Sworn to before me this
21st day of January, 1972

NOTARY PUBLIC

SEYMOUR MILLER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-2716311
Qualified in New York County
Commission Expires March 30, 1973

MEMORANDUM OPINION OF MAC MAHON, U.S.D.J. DENYING MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS et al.,

Plaintiffs,

-against-

TEXACO, INC.,

Defendant.

----------x

71 Civ. 2751

MEMORANDUM

MacMAHON, District Judge.

Plaintiffs move for summary judgment, pursuant to Rule 56, Fed.R.Civ.P., in this suit in the admiralty brought under 46 U.S.C. § 594. Plaintiffs are thirty-two seamen seeking recovery of one month's wages against their employer, Texaco, Inc.

Certain facts appear to be undisputed. On or about January 6, 1971, plaintiffs signed on for a foreign voyage aboard the S.S. Texaco Illinois. Sixteen days later, the foreign voyage was cancelled and the vessel was diverted to Louisiana, where plaintiffs signed off

their shipping articles and accepted their earned wages. Plaintiffs then signed on for a new voyage aboard the S.S. Texaco Illinois at the same rates of pay.

Under 46 U.S.C. § 594, seamen are entitled to receive additional compensation equal to one month's wages when, through no fault of their own and without their consent, they are discharged from a voyage before one month's wages are earned.

Defendant in the present action maintains that the plaintiffs consented to the termination of the foreign voyage by signing off the articles and further, that plaintiffs waived their right to recovery under the statute by continuing in the employment of the defendant in the same capacities and at the same pay. Plaintiffs claim that they did not consent and that the acceptance of new employment does not constitute a waiver of their rights under the statute.

These are the only issues in contention here. Though they are primarily issues of law, there are factual questions related to them that are still unresolved and, therefore, summary judgment is inappropriate.

Memorandum Opinion of MacMahon, U.S.D.J. Denying Motion for Summary Judgment

The basic question is the state of mind of the plaintiffs when the foreign voyage was terminated. Consent is a valid defense under 46 U.S.C. § 594, but to establish it, the defendant must show that it was given without any duress and with full knowledge of what it meant. The S.S. "Standard" Bonici v. Standard Oil Co. of New Jersey, 103 F.2d 437 (2d Cir. 1939); Jones v. American Export Isbrandtsen Lines, Inc., 285 F. Supp. 345 (S.D.N.Y. 1968).

Plaintiffs claim, through the affidavit of their attorney, that they did not understand what they were signing away; defendant offers the affidavit of an Assistant United States Shipping Commissioner to the effect that plaintiffs' union representative was present to provide them with the necessary information.

Plaintiffs' state of mind is also at issue on the question of whether they waived their claims through the acceptance of new employment. Such actions may constitute a waiver under 46 U.S.C. § 594. Salyer v. American Export Isbrandtsen Lines, Inc., 262 F. Supp. 364 (S.D.N.Y. 1966).

Memorandum Opinion of MacMahon, U.S.D.J. Denying Motion for Summary Judgment

These issues of fact respecting both defenses offered in this action require full development upon a plenary trial.

Accordingly, the motion for summary judgment is denied.

So ordered.

Dated: New York, N. Y.
February 7, 1972

Lloyd F MacMahon

LLOYD F. MacMAHON
United States District Judge

NOTICE OF MOTION TO DISMISS COMPLAINT OR TO COMPEL APPEARANCES AND PRODUCTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

EARL B. LEWIS, et al,

Plaintiffs,

-against-

TEXACO, INC.,

Defendant.

- - - - - - - - - - - - - - - - - - - x

NOTICE OF ~~CROSS~~-MOTION

71 Civ. 2751 C.B.M.

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of James S. McMahon, Jr., duly sworn on the 15th day of August, 1972 and upon all the pleadings and proceedings heretofore had herein, particularly the recommendations and report of United States Magistrate Gerard Goettel dated November 23, 1971, the orders of the Honorable Murray Gurfein dated December 1 and December 3, 1971, and the memorandum, opinion and order of the Honorable Lloyd F. MacMahon dated February 7, 1972 and the transcript of the testimony of plaintiff, Clarence Chladek taken by Texaco, Inc. on March 1, 1972, the undersigned will cross-move this Court in Courtroom 110, United States Court House, Foley Square, Borough of Manhattan, City and State of New York on the 22nd day of August, 1972 at 10:30 a.m. in the forenoon of that day

or as soon thereafter as counsel can be heard for an order pursuant to Rule 37 of the Federal Rules of Civil Procedure dismissing plaintiffs' complaint for failure to comply with the prior orders of this Court or in the alternative, compelling certain additional individual plaintiffs to appear for the taking of their depositions upon oral examination and compelling plaintiff, Clarence Chladek to appear and make further answers to the questions propounded to him upon the oral deposition previously taken of him by defendant on the 1st day of March, 1972 and for a protective order directing that Texaco, Inc. not appear for the taking of its deposition or appear following the completion of plaintiffs' testimony, and that it not be required to produce the documentation set out in the plaintiffs' notice to take its deposition and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
August 15, 1972.

Yours, etc.,

BIGHAM ENGLAR JONES & HOUSTON

BY /s/
JOHN L. QUINLAN
A Member of the Firm
Attorneys for Defendant
Office & P.O. Address
99 John Street
New York, N.Y. 10038
REctor 2 - 4646

TO: ABRAHAM FREEDMAN, ESQ.
36 Seventh Avenue
New York, N.Y. 10011

AFFIDAVIT OF JAMES S. MC MAHON, JR. IN SUPPORT OF MOTION TO DISMISS COMPLAINT, ETC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

EARL B. LEWIS, et al, :

Plaintiffs, :

-against- :

TEXACO, INC., :

Defendant. :

- x

AFFIDAVIT

71 Civ. 2751 C.B.M.

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES S. MC MAHON, JR., being duly sworn deposes and says:

That he is an attorney duly admitted to practice in this Honorable Court and associated with the firm of Bigham, Englar, Jones & Houston, attorneys for defendant, Texaco, Inc. That as such he is fully familiar with all the prior pleadings and proceedings heretofore had herein and submits this affidavit in support of Texaco, Inc.'s motion to compel certain additional plaintiffs to appear for the taking of their oral depositions pursuant to the report and recommendations of United States Magistrate Gerard L. Goettel dated November 23, 1971 and the confirming orders of United States District Judge Murray Gurfein dated December 1 and 3, 1971, copies of which are annexed

hereto. Your deponent also requests that plaintiff, Clarence Chladek directed to again appear for the further taking of his oral deposition and that he be ordered to answer the numerous questions propounded by your deponent to him and to which many objections were interposed by his counsel at the time of the taking of his deposition. The original of his deposition is annexed hereto for the convenience and reference of the Court. Your deponent also submits this affidavit in opposition to the motion of plaintiffs to compel the defendant to appear for the taking of its deposition by Mr. John McCarthy and for an order compelling defendant to produce certain records of the defendant Company that are totally irrelevant and immaterial to the instant litigation.

Plaintiffs instituted this lawsuit on or about June 22, 1971, each seeking one-months wages in addition to earned wages and an alleged statutory penalty as the result of the alleged termination of ships articles of the S.S. "TEXACO ILLINOIS" prior to the conclusion of the first month of the voyage described in the articles. This lawsuit is brought pursuant to alleged rights of these plaintiffs claimed under 46 U.S.C. §594.

Defendant interposed its answer and on July 22, 1971, served a notice to take the deposition of each of the 32 individual plaintiffs. Plaintiffs' counsel there-

after served a notice of motion and supporting papers requesting a protective order forbidding the taking of the 32 plaintiffs' depositions. The motion was brought on for a hearing before the Honorable Murray Gurfein who referred it to Magistrate Gerard Goettel to hear and report, Magistrate Goettel, in a report dated November 23, 1971, recommended that the depositions proceed in a limited and orderly manner as outlined in his report, a copy of which is annexed hereto. The report was confirmed by an order of the Honorable Murray Gurfein dated December 1, 1971 and thereafter stayed by the supplemental order of Judge Gurfein dated December 3, 1971 pending the outcome of a motion for summary judgment made by the plaintiffs. Plaintiffs' motion for summary judgment came on for a hearing before United States District Judge MacMahon and was subsequently denied by Judge MacMahon in a memorandum opinion dated February 7, 1972. A copy of Judge MacMahon's opinion is also annexed hereto.

At long last, defendant was about to embark on discovery after having been delayed by various dilatory tactics of the plaintiffs from July, 1971 when its notice to take plaintiffs' depositions was served and filed.

The first plaintiff produced by counsel representing the plaintiffs was Clarence Chladek. His deposition was taken on March 1, 1972. In apparent contradiction to

the letter and spirit of Magistrate Goettel's report of November 23, this witness knew little, if anything, of the facts and circumstances of the incident which is the subject matter of this lawsuit. This plaintiff was not even aware that a problem had arisen concerning the voyage of the "TEXACO ILLINOIS" or that a lawsuit had been filed until he was advised by a representative of the defendant, the Captain of the "TEXACO ILLINOIS", who he met by accident on a street in Port Arthur quite sometime following the occurrence of the alleged incident and the institution of the lawsuit. (See pp. 52, 53, 54 of the Chladek deposition, the original of which is attached hereto). Furthermore, numerous attempts were made by plaintiffs' counsel to lead the witness and to stifle defendant's representative from examining into the facts surrounding the occurrence as well as other facts material thereto. (See pp. 11-14, 15, 16-17, 21, 22, 26, 28-29, 30-40, 41-42, 48, 50-51, and particularly 55 through 60 where the witness was directed not to answer and his counsel refused to defer to the Court for immediate rulings even though the witness was from out of State).

On March 28, your deponent was finally afforded the opportunity of examining the first of the plaintiffs having knowledge of the facts. No further plaintiffs have been produced to date although on April 5, 1972, counsel for plaintiffs tendered, on short notice, another plaintiff.

However, your deponent was unable to attend that deposition prior to the sailing of the vessel aboard which the intended witness was sailing at the time. Your deponent was actually engaged in trial at the time before United States District Judge Pollack in the case of Strickland v. Texaco and although the offer was made by your deponent to take the deposition of the intended witness in the evening, the vessel sailed prior thereto. No additional plaintiffs have been tendered to your deponent for the taking of their depositions. There is no question but that the testimony of a reasonable number of these plaintiffs is vital to this defendant's defense. The importance of the plaintiffs' testimony was recognized by Magistrate Goettel in his report. The importance of taking the depositions of all 32 plaintiffs is even more emphasized by the determination of Judge MacMahon in his decision on plaintiffs' summary judgment motion that much of the resolution of this lawsuit will turn on the "state of mind" of the plaintiffs.

Plaintiffs' counsel is also now seeking to depose the defendant by Mr. John McCarthy, one of its marine operations managers. Defendant does not object to the production of Mr. McCarthy although it submits that his deposition should take place at some reasonable time following the completion of a reasonable number of plaintiffs' depositions. While as argued by plaintiffs' counsel,

priority of depositions no longer has the importance it once had under the recently amended Federal Rules, nevertheless, where a party such as this defendant has faced such abuse in attempting to secure discovery, the Court may enter an order regulating such discovery and direct that it proceed in an orderly manner. It is submitted that an orderly manner in this litigation, particularly in light of the aforementioned developments, would be for the defendant to be allowed to complete the taking of the depositions noticed by it before allowing the plaintiffs to proceed with their depositions.

Furthermore, plaintiffs, in their notice to depose Texaco, Inc., have demanded that Texaco produce "all payroll records relating to the S.S. "TEXACO GEORGIA" for the voyage which commenced October 4, 1967 and terminated on or about October 6, 1967." It is inconceivable what materiality or relevancy this requested documentation can have to the instant lawsuit or how it can even possibly lead to admissible evidence. The instant lawsuit involves a voyage of the "TEXACO ILLINOIS" and the articles issued thereunder for a period in January, 1971, which is more than three years later than the period for which documents have been requested.

WHEREFORE, it is respectfully requested that plaintiffs' motion compelling Texaco, Inc. by Mr. John McCarthy to appear and attend for the taking of its deposition be denied or in the alternative, that the Court enter an order further regulating discovery procedures in accordance with the spirit and intent of the recommendations and report of Magistrate Gerard Goettel and that a protective order be entered denying plaintiffs' request for the production of the documents as requested in their notice to take Texaco, Inc.'s deposition and that plaintiff, Clarence Chladek be required to attend and make further answers to the questions propounded to him at the time his deposition was taken and for such different and further relief as the justice of the cause may require together with the expenses of defendant on this cross-motion.

James S. McMahon Jr.
JAMES S. MC MAHON, JR.

Sworn to before me this
15th day of August, 1972.

Elizabeth Di Bella

ELIZABETH DI BELLA
Notary Public, State of New York
No. 24-0947350 Qual. in Kings County
Certs. filed with Kings & N.Y. Co. Clks.
Commission Expires March 30, 1973

A 78

AFFIDAVIT OF NED R. PHILLIPS IN OPPOSITION TO MOTION TO DISMISS COMPLAINT, ETC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK .

EARL B. LEWIS, et al., : 71 Civ. 2751 (C.B.M.)

Plaintiffs :

-against- :

TEXACO, INC., : AFFIDAVIT

Defendant :

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

NED R. PHILLIPS, being duly sworn, deposes and says:

I am an attorney at law associated with Abraham E. Freedman, counsel for plaintiffs herein and am fully familiar with all of the prior pleadings and proceedings had heretofore herein.

This affidavit is submitted in opposition to the motion of defendant for:

a) an order dismissing the complaint for alleged failure to comply with prior orders of the court, or, in the alternative;

b) an order compelling certain additional plaintiffs to appear for deposition, and;

c) compelling one plaintiff whose deposition has already been taken to appear for further interrogation, and for;

d) an order that defendant Texaco not be required to appear for its deposition; and,

e) that defendant not be required to furnish discovery material requested by plaintiff.

This is an action by 32 plaintiff seamen to recover one months wages pursuant to 46 U.S.C., Section 594 [1] and for the statutory penalty of two days pay for each day payment is withheld without justification pursuant to 46 U.S.C., §596. [2]

The following facts are undisputed:

a) On January 6, 1971, plaintiffs herein signed foreign shipping articles which provided for a voyage aboard defendant's vessel, the S.S. Texaco Illinois, from "... the Port of Port Everglades, Florida, to one or more ports in the Gulf and/or Caribbean and Panama and thence to one or more ports on the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not exceeding 90 days."

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1. §594 Right to wages in case of improper discharge

Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned. R.S. §4527.

2. §596 Time for payment

The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the

b) The vessel did not make the voyage as set forth in the shipping articles.

c) After the commencement of the voyage and before one month's wages were earned the vessel was diverted back to the United States where it arrived at Taft, Louisiana, on January 21, 1971, where the articles were terminated and the voyage ended.

Upon joinder of issue, defendant noticed the depositions of all 32 plaintiffs. Counsel thereupon moved for a protective order which was denied by Judge Gurfein, who adopted the recommendations of Magistrate Goettel, which provided, in part, as follows:

> "Most of the plaintiffs (seventeen out of thirty-two) are still employed by the defendant. Indeed, fifteen of the seventeen are still aboard the same vessel, the S.S. Texaco Illinois. These Texaco vessels operate along the East Coast of the United States regularly. The Illinois is presently scheduled to be in New England. The Texaco vessels come into the port of New York on occasions. Consequently, the defendant should be allowed to take the depositions of any plaintiffs who arrive in the port of

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2. (Cont'd) seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts. R.S. §4529; Dec. 21, 1989, c.28, §§4, 26, 30 Stat. 756, 764; Mar. 4, 1915, c.153, §3, 38 Stat. 1164.

> New York, or within 100 miles from New York (i.e., ports in the States of Pennsylvania, New Jersey, and Connecticut). In the event that the Illinois comes into a port other than the port of New York, but within 100 miles of New York, the plaintiffs should have the alternative of paying the travel costs of defendant's counsel to the location of the vessel, so that the fifteen plaintiffs may be deposed at once without unnecessary expense. Since these plaintiffs are in the employ of the defendant, defendant will be well aware of their movements and able to notify plaintiffs' counsel when they will be in a suitable geographic location to be deposed." (Emphasis supplied)
>
> "Three months from the date of the court's order, the defendant should be allowed to make further application with respect to depositions. If the Illinois has not been within 100 miles of New York during that period, the plaintiffs should then arrange to transport the three plaintiffs who served as the union representatives for their departments to New York for the taking of their depositions." (A copy of Magistrate Goettel's report is annexed hereto, marked Exhibit 1)

Since the order, two depositions were taken, one March 1, the second March 28th. Deponent also produced a third plaintiff and offered to take his deposition during evening hours, if counsel for defendant was otherwise occupied. This offer was rejected by defendant, who was then on trial.

At no time since these depositions were taken has defendant notified deponent that any of the plaintiffs aboard defendant's vessels were in the area. In the light of the foregoing, it is clear that plaintiff has been in full compliance with the order of

the court and that it is the defendant who has been remiss in failing to comply by notifying the plaintiffs' counsel of the availability of the plaintiffs who are aboard its vessels and when the latter were in the port of New York.

Prior to the taking of the depositions a motion was made by plaintiffs for summary judgment on the ground that there were no issues of fact, merely questions of law. In denying this motion Judge McMahon established the guidelines for the taking of the depositions, and narrowed the issues in the case as follows:

> "Defendant in the present action maintains that the plaintiffs consented to the termination of the foreign voyage by signing off the articles and further, that plaintiffs waived their right to recovery under the statute by continuing in the employment of the defendant in the same capacities and at the same pay. Plaintiffs claim that they did not consent and that the acceptance of new employment does not constitute a waiver of their rights under the statute."

* * *

> " The basic question is the state of mind of the plaintiffs when the foreign voyage was terminated. Consent is a valid defense under 46 U.S.C., §594, but to establish it, the defendant must show that it was given without any duress and with full knowledge of what it meant. The S.S. "Standard" Bonici v. Standard Oil Co. of New Jersey, 103 F.2d 437 (2nd Cir. 1939); Jones v. American Export Isbrandtsen Lines, Inc., 285 F.Supp. 345 (S.D.N.Y. 1968)."

* * *

> " Plaintiffs' state of mind is also at issue on the question of whether they

> waived their claims through the acceptance of new employment. Such actions may constitute a waiver under 46 U.S.C., §594. Salyer v. American Export Isbrandtsen Lines, Inc., 262 F.Supp. 364 (S.D.N.Y. 1966)." (A copy of Judge MacMahon's opinion is annexed hereto, marked Exhibit 2)

Thus, the defendant has the burden of proving the validity of their defense, and the sole issue upon which plaintiffs may be examined is their state of mind upon the termination of the voyage and their state of mind as to whether they waived their claims by the acceptance of new employment.

A review of those portions of the testimony of the plaintiff Clarence Chladek, which defendant contends furnishes a basis for further interrogation and harassment of this plaintiff, reveals that either the questions objected to were ultimately answered or, in the rare instances where plaintiff was instructed not to answer, the question was clearly far outside the scope of examination as limited by Judge McMahon. Thus, on pages 11-14, 15, 16-17, 21, 22, 26, 28-29, 30-40, 41-42, 48 and 50-51, all of the questions propounded were answered and the sole purpose of the objections were to preserve them for trial.

On pages 55-60, objection was made to one question with instructions not to answer because the question was vague, ambiguous and irrelevent.

It is clear from a reading of the examination of Mr. Chladek by deponent commencing at the bottom of page 65 and terminating at page 69, line 9, that all relevant questions pursuant to the order of Judge McMahon were asked and answered and there is no

justification whatsoever for compelling this witness to appear once again to answer some of the frivolous and irrelevant questions which counsel for defendant seeks to propound to him. Significantly, the affidavit of counsel for defendant is devoid of any specific questions relevant to the issues in this case which it claims it was precluded from asking.

Rule 37(a)(2) provides that "when taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order." In the instant case, the examination was, after some colloquy between counsel, completed in accordance with this rule. To have terminated the examination would have worked an unnecessary hardship upon the plaintiff Chladek, and would have been inconsistent with the spirit and purpose of these rules.

Plaintiff has moved to compel defendant to submit to discovery upon its refusal to appear for examination before trial on notice and to produce certain documents. Defendant has instead moved for an order to preclude plaintiffs' discovery.

No justification whatsoever is given for the refusal of the defendant to comply with the notice of deposition and of discovery other than the mere self-serving statement that in the opinion of counsel for the defendant it would be orderly for the plaintiff to be denied discovery. Defendant utterly ignores the plain language of Rule 26(d) of the Federal Rules of Civil Procedure, which provides that "... the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery."

Defendant argues that plaintiffs' request for certain discovery material relating to a voyage of the Texaco Georgia in 1967 is not conceivably material or relevant.

The standard for permissible discovery under the Federal Rules of Civil Procedure is succinctly set forth as follows:

> "It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." Rule 26(b)(1), Federal Rules of Civil Procedure.

The complaint in this action seeks two days pay for each and every day during which payment is delayed pursuant to 46 U.S.C. §596. It has been held that the one months' compensation provided for by statute in cases of a discharge before one months' wages are earned are wages within the meaning of 46 U.S.C., §596. Feldman v. American Palestine Line, Inc., 25 F.2d 1002 (S.D.N.Y. 1926).

Clearly then, evidence that the defendant had paid such statutory compensation under identical circumstances in the past would clearly highlight the arbitrary and unjustifiable refusal to pay in this instance such as would merit the application of the penalty provided for by 46 U.S.C., §596, and is therefore clearly relevant to the issues raised by the pleadings in this case.

In any case, the deposition of the defendant is patently necessary to establish the fact that they failed to notify the plaintiffs that, in signing off the shipping articles, they were giving up any rights that they may have had under 46 U.S.C., §594.

For the foregoing reasons, it is respectfully submitted

that the motion of defendant to dismiss the complaint and for an order directing that defendant not appear for examination before trial and not be obligated to produce any material upon discovery and inspection be denied, and that the plaintiffs be permitted to take the deposition of the defendant and that the defendant be ordered and directed to produce the requested documents in connection with said deposition.

Ned R. Phillips

Sworn to before me this
25th day of August, 1972

MARJORIE JOHNSON, NOTARY PUBLIC
STATE OF NEW YORK No. 41-1983425
QUALIFIED IN QUEENS COUNTY
COMMISSION EXPIRES MARCH 30, 1973

A 87

ORDER ENDORSED ON MOTION TO DISMISS COMPLAINT OR TO COMPEL APPEARANCES AND PRODUCTION

MICROFILM
NOV 8 1972

U.S. DISTRICT COURT
FILED
NOV 8 1972
S.D. OF N.Y.

The defendant is directed to take the deposition of the deputy commissioner of the United States Port of New Orleans, Wilbur Ball, on or before January 31, 1973 and the deposition of the Union Representative by the same date. Hereafter the court will rule on the necessity for taking any further depositions of the plaintiffs.

So Ordered

Constance Baker Motley

U.S.D.J.

S.D.N.Y.

November 6, 1972

CERTIFICATE PURSUANT TO SECTION 2403, TITLE 28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---- X

Earl B. Lewis, et al.,

Plaintiffs,

-v- 71 Civ. 2751 C.B.M.

Texaco Inc.,

CERTIFICATE

Defendant.

---- X

TO THE HONORABLE WILLIAM B. SAXBE,
ATTORNEY GENERAL OF THE UNITED STATES:

On behalf of this Court and pursuant to Sec. 2403, Title 28, United States Code, I hereby certify that in this case there is drawn in question the constitutionality of Sec. 594, Title 46, United States Code, an Act affecting the public interest.

David N. Edelstein

DAVID N. EDELSTEIN
Chief Judge
United States District Court
Southern District of New York

DATED: New York, N. Y.
October 21, 1974

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al.,

Plaintiff,

-against-

TEXACO, INC.,

Defendant.

71 Civ. 2751 (CBM)

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW.

1. At all the time relevant hereto defendant was and still is a corporation engaged in the steamship business with its principal office and place of business in the Borough of Manhattan City and State of New York.

2. At all times relevant hereto, defendant owned, operated and controlled the S.S. Texaco Illinois engaged in domestic and foreign commerce.

3. On or about the 6th day of January, 1971, plaintiffs signed foreign articles before the United States Shipping Commissioner for the port of Miami, Florida, in the capacities and monthly rates of wages hereinafter set forth:

PLAINTIFFS	CAPACITY	MONTHLY WAGES
Earl B. Lewis	Boatswain	$672.43
Herbert D. Parsons	Quartermaster	516.14
Robert J.C. Murray	Quartermaster	516.14
Ruthven H. Lee	Quartermaster	516.14
Clarence T. Chladek	Able Bodied Seaman	504.41
Robert C. Arch	Able Bodied Seaman	504.41
Harry L. Davis	Able Bodied Seaman	504.41
"O" "C" Smith	Ordinary Seaman	399.78

PLAINTIFFS	CAPACITY	MONTHLY WAGES
Kenneth Taylor	Ordinary Seaman	399.78
Francis C. Kopas	Deck Maintenance	573.28
James H. Richmond, Jr.	Deck Maintenance	573.28
Culver Q. Holt	Electrician	771.10
William P. Jacquet	1st Pumpman	705.06
Anthony Alves	2nd Pumpman/MM	705.06
Albert F. Ryan	Oiler	554.73
John Kardos	Oiler	554.73
Timothy J. O'Donovan	Oiler	554.73
Martin J. Urban	Chief Wiper	554.73
Louis G. Fontenot	Fireman-Watertender	554.73
Jacques H. Blanchard	Fireman-Watertender	554.73
Robert O. Medlock	Fireman-Watertender	554.73
Monico Davis	Wiper	463.05
Athens Walker	Wiper	463.05
Joseph A. Baron	Wiper	463.05
James Melvin	Chief Steward	675.22
Joe W. Thrower	Chief Cook	606.01
Junious McCall	2nd Cook & Baker	524.74
Harold F. McLean	Galleyman	396.97
Joseph H. Boland	Officers Mess	386.44
Thomas W. Chastain, Jr.	Crew Mess	386.44
Philip Auster	Utility	386.44
Maurice C. Leblanc	Utility	386.44

4. The above mentioned shipping articles provided for a voyage from "...the Port of Port Everglades, Florida, to one or more ports in the Gulf and/or Caribbean and Panama and thence to one or more ports on the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not exceeding (90) days."

5. After commencement of the voyage, the vessel was diverted back to the United States where it arrived at Taft, Louisiana on January 21, 1971. The articles were closed at that port and plaintiffs received certificates of discharge from the United States Coast Guard.

6. The vessel did not call at any of the ports in the Gulf and/or Caribbean and/or Panama and/or any part of the Pacific Coast of the Continental United States as set forth in the shipping articles.

7. The discharge of plaintiffs was without their consent and without any fault on their part justifying such discharge.

8. Plaintiffs timely demanded of defendant the payment of one month's wages pursuant to statute prividing therefor (46 U.S.C. 594).

9. Defendant, at time of discharge, refused and continues to refuse to pay to plaintiffs the one month's wages claimed pursuant to 46 U.S.C. 594.

10. In October, 1967, under identical conditions, defendant paid the statutory one month's wages to the crew of the Texaco Georgia.

11. Plaintiffs are entitled to one month's wages with interest from January 21, 1971 to date of payment at the rate of six (6%) percent per annum.

12. Defendant's refusal to pay the one month's wages in this case is arbitrary, unreasonable and without sufficient cause entitling the plaintiffs to two days wages for each day payment is delayed since January 21, 1971.

13. Plaintiffs are also entitled to reasonable counsel fees necessarily incurred in the successful prosecution of this

action in the amount of Seven Thousand Nine Hundred and Fifty ($7,950.00) Dollars.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the parties to and subject matter of this action.

2. The statute involved, 46 U.S.C. 594, is valid and constitutional.

3. Defendant herein breached the shipping articles and discharged plaintiffs before one month's wages were earned without fault on their part justifying such discharge and without their consent within the meaning of 46 U.S.C. 594.

4. Defendant's refusal to pay said one month's wages was arbitrary and without sufficient cause within the meaning of 46 U.S.C. Sec. 596.

5. Plaintiffs are entitled to recover one month's wages as provided in 46 U.S.C. Sec. 594, together with interest compounded at six (6%) percent per annum from January 21, 1971 to date of judgment as follows:

PLAINTIFF	MONTHLY WAGES	INTEREST	TOTAL
Earl B. Lewis	$672.43	$168.49	$840.92
Herbert D. Parsons	516.14	129.33	645.47
Robert J.C. Murray	516.14	129.33	645.47
Ruthven H. Lee	516.14	129.33	645.47
Clarence T. Chladek	504.41	126.39	630.80
Robert C. Arch	504.41	126.39	630.80
Harry L. Davis	504.41	126.39	630.80
"O" "C" Smith	399.78	100.17	499.95
Kenneth Taylor	399.78	100.17	499.95
Francis C. Kopas	573.28	143.64	716.92
James H. Richmond, Jr.	573.28	143.64	716.92
Culver Q. Holt	771.10	193.21	964.31

PLAINTIFF	MONTHLY WAGES	INTEREST	TOTAL
William P. Jacquet	705.06	176.66	881.72
Anthony Alves	705.06	176.66	881.72
Albert F. Ryan	554.73	139.00	693.73
John Kardos	554.73	139.00	693.73
Timothy J. O'Donovan	554.73	139.00	693.73
Martin J. Urban	554.73	139.00	693.73
Louis G. Fontenot	554.73	139.00	693.73
Jacques H. Blanchard	554.73	139.00	693.73
Robert O. Medlock	554.73	139.00	693.73
Monico Davis	463.05	116.02	579.07
Athens Walker	463.05	116.02	579.07
Joseph A. Baron	463.05	116.02	579.07
James Melvin	675.22	169.19	844.41
Joe W. Thrower	606.01	151.85	757.86
Junious McCall	524.74	131.48	656.22
Harold F. McLean	396.97	99.47	496.44
Joseph H. Boland	386.44	96.83	483.27
Thomas W. Chastain, Jr.	386.44	96.83	483.27
Philip Auster	386.44	96.83	483.27
Maurice C. Leblanc	386.44	96.83	483.27

6. Plaintiffs are entitled to recover two days wages for each day that said month's wages have been improperly withheld from as follows:

PLAINTIFF	MONTHLY WAGES	2 DAYS WAGES	X	No. OF DAYS	TOTAL
Earl B. Lewis	$672.43	$44.83			
Herbert D. Parsons	516.14	34.41			
Robert J.C. Murray	516.14	34.41			
Ruthven H. Lee	516.14	34.41			
Clarence T. Chladek	504.41	33.63			
Robert C. Arch	504.41	33.63			
Harry L. Davis	504.41	33.63			
"O" "C" Smith	399.78	26.65			
Kenneth Taylor	399.78	26.65			
Francis C. Kopas	573.28	38.22			
James H. Richmond Jr.	573.28	38.22			
Culver Q. Holt	771.10	51.41			
William P. Jacquet	705.06	47.00			
Anthony Alves	705.06	47.00			
Albert F. Ryan	554.73	36.98			
John Kardos	554.73	36.98			
Timothy J. O'Donovan	554.73	36.98			

PLAINTIFF	MONTHLY WAGES	2 DAYS WAGES	X	No. OF DAYS	TOTAL
Martin J. Urban	$554.73	36.98			
Louis G. Fontenot	554.73	36.98			
Jacques H. Blanchard	554.73	36.98			
Robert O. Medlock	554.73	36.98			
Monico Davis	463.05	30.87			
Athens Walker	463.05	30.87			
Joseph A. Baron	463.05	30.87			
James Melvin	675.22	45.01			
Joe W. Thrower	606.01	40.40			
Junious McCall	524.74	34.98			
Harold F. McLean	396.97	26.46			
Joseph H. Boland	386.44	25.76			
Thomas W. Chastain, Jr.	386.44	25.76			
Philip Auster	386.44	25.76			
Maurice C. Leblanc	386.44	25.76			

7. Plaintiffs are entitled to counsel fees for the successful procesution of this action in the amount of $

AFFIDAVIT OF NED R. PHILLIPS IN SUPPORT OF PLAINTIFFS' APPLICATION FOR COUNSEL FEES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al,

Plaintiffs,

-against-

TEXACO, INC.,

Defendant.

71 Civ. 2751 (CBM)

AFFIDAVIT

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

NED R. PHILLIPS, being duly sworn, deposes and says:

1. Deponent is an attorney at law associated with the office of Abraham E. Freedman, counsel of record for plaintiffs herein and was trial counsel in the above matter.

2. This affidavit is submitted at the request of the Court, in support of plaintiffs' application for counsel fees for the successful prosecution of the above entitled action and is intended to set forth in detail all of the activity of counsel in connection with the preparation and trial of the within matter.

3. On March 25, 1971 deponent was consulted by several of the plaintiffs herein who requested and were given a legal opinion as to the likelihood of recovery of one month's wages, pursuant to statute where foreign shipping articles which they had signed had been unilaterally terminated by the defendant without their consent or fault on their part.

4. On April 28, 1971 a conference was held with John McCarthy, Labor Relations Advisor for the defendant, at which time he was advised that, in our judgment, the plaintiffs were entitled to recover the statutory one month's wages by reason of the unilateral breach of the articles.

5. A telephone conference was held with counsel for defendant at which time he requested and was furnished the legal authorities for the view of deponent that the plaintiffs were entitled to recover.

6. On June 21, 1971 a further conference was had with counsel for defendant, at which time he indicated that the defendant would refuse to make any payment of the statutory sums claimed herein.

7. On June 22, 1971 a summons and complaint were prepared and filed herein.

8. On July 23, 1971 the answer of defendant herein was received and reviewed.

9. On or about August 31, 1971, a motion with accompanying memorandum of law was prepared and filed by plaintiffs to preclude the taking of the deposition of all thirty-two (32) plaintiffs herein on the ground that defendant was merely seeking to harass.

10. On September 9, 1971, an appearance was made at the return of the motion calendar before Judge Gurfein, who subsequently referred the matter to Magistrate Goettel.

11. On November 4, 1971, both parties appeared before Magistrate Goettel, at which time argument was had on plaintiffs' motion for a protective order.

12. On or about November 24, 1971, the report of the Special Master, Magistrate Goettel, was received and reviewed. A letter was thereupon prepared and sent to the Magistrate and to Judge Gurfein requesting that there be a stay of any order directing the taking of depositions pending plaintiffs' motion for summary judgment.

13. On or about December 8, 1971 plaintiffs prepared and filed a motion affidavit and memorandum of law seeking summary judgment. This motion was referred to Judge MacMahon.

14. On or about January 21, 1972 defendant's affidavit and memorandum in opposition to plaintiffs' motion for summary judgment were received and reviewed.

15. On or about February 7, 1972 the memorandum and order of Judge MacMahon was received and reviewed. The Court found that the only issue remaining for trial was whether the plaintiffs knowingly consented to giving up any statutory rights and whether they waived any rights under the statute by remaining in the employ of the defendant.

16. On or about February 28, 1972 a conference was held with the plaintiff Joseph H. Boland, who was the leading Union representative aboard the vessel during the voyage in suit.

17. On or about March 1, 1972 the deposition of the

plaintiff Clarence Chladek was taken at the office of defendant's counsel.

18. On or about March 21, 1972 a conference was held with plaintiff Robert O. Medlock.

19. On or about March 28, 1972 the deposition of plaintiff Joseph H. Boland was taken aboard the S.S. Texaco Nebraska which, at the time, was docked in the port of Bayonne, New Jersey.

20. On or about March 6, 1972 plaintiff had noticed the deposition of the defendant by John McCarthy, its Labor Relations Superintendent. Defendant having failed to indicate whether and when it would produce said witness, a motion was made and filed with the Court on July 17, 1972 to compel the defendant to produce this witness for examination before trial.

21. On August 16, 1972 deponent reviewed defendant's memorandum of law and affidavit in support of its cross motion in opposition to plaintiffs' motion to compel discovery by defendant.

22. On or about October 26, 1972 plaintiffs' motion to compel defendant to appear for examination before trial and defendant's cross motion to compel the plaintiffs to appear were argued before the Court, Judge Motley presiding.

23. On November 8, 1972 the Court ordered the defendant to produce the witness, John McCarthy, for deposition and further directed that depositions be taken of the Shipping Commissioner and Union representative and granting leave to defendant to make application for further depositions upon good cause shown.

24. On November 21, 1972 the deposition of defendant, by John McCarthy, was taken at the office of counsel for defendant.

25. On January 2 and January 3, 1973 counsel travelled to New Orleans, Louisiana where the depositions of the Deputy Shipping Commissioner Wilbur F. Ball, the Master of the vessel Verner Claybourn and the attending Union representative Tomas F. Mauricio were taken.

26. On or about October 1, 1973 attendance at a pre-trial conference before Judge Motley, who referred the matter to Magistrate Jacobs for possible settlement or, in the alternative, supervision and preparation of a pre-trial memorandum and order.

27. On or about August 1, 1974 plaintiffs prepared a pre-trial order in the above matter for submission to the Court.

28. On or about September 19, 1974 there was a further pre-trial conference before the Court, at which time trial date was set and defendant was directed to submit a brief on the constitutional issue raised by it.

29. On September 28, 1974 deponent received and reviewed defendant's brief on the purported constitutional issue raised.

30. On October 3, 1974 deponent received from defendant its motion to amend the pre-trial order and its request for further delay of the trial herein.

31. On October 29, 1974 this case was tried to the Court, taking an entire trial day. At the conclusion of the trial

the Court indicated that it found for the plaintiffs on the issue of entitlement to the statutory one month's wages and reserved decision on the questions of pre-judgment interest, the applicability of 46 U.S.C. 596 and counsel fees, directing the parties to submit post-trial statement on the issue of counsel fees and post-trial memoranda of law on all issues.

32. Necessary research, preparation and filing of this affidavit and accompanying post-trial memorandum of law.

33. It is estimated that a total of approximately 106 hours were expended in the course of preparation of this case for trial, including the numerous motions, pleadings, depositions, preparation for trial, trial itself and the numerous memoranda of law.

34. Deponent has been a member of the bar of this Court for upwards of sixteen (16) years engaging principally in trial work.

35. A reasonable valuation of deponent's services on an hourly basis would be $75.00 per hour.

WHEREFORE, deponent respectfully prays that this Court find that the reasonable value of deponent's legal services be fixed at the rate of $75.00 per hour, that he has spent approximately 106 hours on this case and that a reasonable award of counsel fees herein would be $7,950.00.

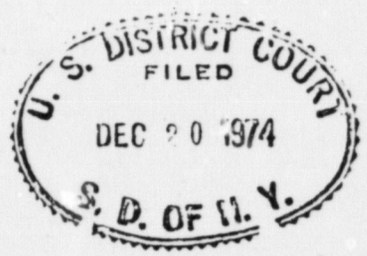
Ned R. Phillips
NED R. PHILLIPS

Sworn to before me this
14th day of November, 1974.
William Hughes

A 101

OPINION OF MOTLEY, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



EARL B. LEWIS, et al.,

Plaintiffs,

-v-

TEXACO, INCORPORATED,

Defendant.

71 CIV. 2751

#41606

APPEARANCES

ABRAHAM E. FREEDMAN
By: Ned R. Phillips
36 Seventh Avenue
New York, New York 10011

Attorneys for Plaintiffs

BIGHAM, ENGLAR, JONES & HOUSTON
By: James S. McMahon, Jr.
99 John Street
New York, New York

Attorneys for Defendant

CONSTANCE BAKER MOTLEY, D. J.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This is an action by 32 seamen to recover one month's wages from their employer, plus penalty wages of two days' wages for each day payment has been delayed, prejudgment interest on the amount recovered, and counsel fees.

On January 6, 1971 plaintiffs signed Foreign Articles before a United States Shipping Commissioner at the port of Miami, Florida for a voyage from Port Everglades, Florida to one or more ports in the Gulf and/or Caribbean and Panama and then one or more ports on the Pacific Coast, for a period not to exceed ninety days, at specified monthly wages. After commencement of the voyage on board the Texaco Illinois, Texaco, Incorporated, the defendant vessel owner, decided that it was not necessary to make the trip to the West Coast. Consequently, the vessel was diverted back to the States and on January 21, 1971 pulled into Taft, Louisiana.

Plaintiffs, who are all members of the National Maritime Union, sought advice, before signing off the vessel,

from their union representative who had come on board ship, Patrolman Tomas F. Mauricio, regarding their entitlement to a month's wages in addition to wages earned to date. 46 U.S.C. § 594. There had been talk among plaintiffs concerning their entitlement to such a payment on board ship, after learning that the ship was being diverted, but they had no specific knowledge of their rights. (Chladek Deposition, 3/28/72, pp. 22-27.) Since Mauricio did not know the answer to this question, he called his superior, the Port Agent in New Orleans, S. D. George. (Claybourn Deposition, 1/3/73, pp. 9-12; Mauricio Deposition, 1/3/73, pp. 14-17.) Mr. George was of the opinion that plaintiffs were not entitled to an additional one month's wages. (Def's Exhs. B and C.) Neither Mauricio nor George was an attorney (Boland Deposition, 2/28/72, p. 58.) George agreed, however, to consult with the union's attorneys (Def's Exh. B.) and to follow through on the matter. (Mauricio Deposition, 1/3/73, p. 18.). The Captain advised Mauricio that there had been no violation of the articles and, therefore, the additional one month's pay was not due. (Def's Exh. B; Mauricio Deposition, 1/3/73, pp. 14-17.) Mauricio advised the Captain that the

men were signing off under protest and then left the vessel. (Mauricio Deposition, 1/3/73, pp. 18-19.) He was not actually present during the sign off. (Id. at 27.) Plaintiffs then signed off the Foreign Articles, received discharge certificates, and received wages earned from January 6 to 21, 1971.

Most of the plaintiffs immediately thereafter signed Master's Articles for a coastwise voyage up the East Coast of the United States on the same vessel. During the course of this voyage, on January 31, 1971, plaintiffs, through their union representatives on board ship, wrote a letter to the national office of their union protesting Mr. George's opinion. (Def's Exh. B.) Thereafter, on March 25, 1971, plaintiffs consulted their attorney. On April 28, 1971, through their attorney, plaintiffs advised defendant, through John McCarthy, its Labor Relations Superintendent, and its attorney that plaintiffs were entitled to an additional month's wages pursuant to 46 U.S.C. § 594. (Affidavit of Ned Phillips filed 11/15/74.) This section provides as follows:

"Any seaman who has signed an agreement and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover such compensation as if it were wages duly earned."

Defendant, by its attorney, after considering the matter, refused to make the requested payment of an additional 30 days on or about June 21, 1971. The next day this action was instituted. In reply to plaintiff's claim for one month's wages defendant says that: 1) plaintiffs are not entitled to recover because they consented to termination of the voyage; 2) plaintiffs waived their

rights under the statute by continuing in the employ of defendant; and 3) the statute, if applied to the facts of this case, would be unconstitutional because plaintiffs did not, in fact, suffer any damage.

1) In support of its claim that plaintiffs consented to termination of the voyage, defendant points to the fact that in signing off the Foreign Articles plaintiffs did not lodge a written protest thereon and signed their names to the document which stated that the termination of the voyage was with the mutual consent of the parties. (Def's Exh. A.) The court holds that the oral protest to the Captain by plaintiffs' union representative was sufficient, and since plaintiffs did not know of their rights no individual protest by them was required. See Mavromatis v. United Greek Shipowners Corporation, 179 F.2d 310, 317 (5th Cir. 1950). In the Foreign Articles, signed by each plaintiff, in the column headed "Cause of Leaving Ship" the letters "MC", which stand for mutual consent, are entered. Plaintiffs deny that they consented to termination of the voyage.

Federal statutes provide that in the case of a release for wages signed by a seaman in the presence of a

Shipping Commissioner, any court having jurisdiction may, for good cause shown, set aside such release and take such action as justice shall require. Pacific Mail Steamship Company v. Lucas, 258 U. S. 266 (1922); 46 U.S.C. §§ 597, 644.

Here, defendant claims that plaintiffs released their right to liquidated damages under § 594. The burden is upon defendant who has set up seaman's releases to show that they were executed freely, without deception or coercion, and that they were executed by the seaman with full understanding of his rights. "The adequacy of the consideration and the nature of the. . .legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding." Garrett v. Moore-McCormack Company, Inc., 317 U. S. 239, 248 (1942).

The evidence adduced upon the trial of the consent issue showed, and the court finds, that plaintiffs did not, with full understanding of their rights, consent to termination of the voyage and that good cause has been shown for setting aside the ostensible mutual consent.

The decision to terminate the voyage was made by defendant without consultation with plaintiffs. The captain

of the vessel, Verner Claybourn, did make known that the vessel would be diverted back to the States, but he did not secure consent of plaintiffs to such termination. (Claybourn Deposition, 1/3/73, p. 4.) Although Claybourn spoke to plaintiffs' representative aboard ship concerning the pay-off procedures, he had no discussion with plaintiffs or their shipboard representatives concerning an additional month's pay at any time before the "sign off." (Id. at 5.)

Deputy Shipping Commissioner Wilbur Ball, who officiated at the sign off, did not advise plaintiffs of their rights under § 594, did not inquire of plaintiffs regarding their consent to termination, and did not read any portion of the Articles to plaintiffs at the time of sign off. He directed his attention only to the basic wage due plaintiffs. He was not an attorney and was not specifically familiar with § 594. (Deposition of Ball, 1/3/73, pp. 3-4, 16, 18-22, 26-27; Boland Deposition, 3/28/72, p. 59; Deposition of McCarthy, 11/21/72, p. 16.)

The Foreign Articles signed by plaintiffs, although it made reference to numerous statutory provisions, made no reference to § 594. More specifically, it did not

advise plaintiffs of their rights with respect to that statute. (Def's Exh. A.)

Copies of their work agreement given to plaintiffs by their union regarding rights aboard the vessel in connection with the voyage did not advise them of their rights under § 594. (Chladek Deposition, 3/28/72; p. 23.) And in discussing their possible entitlement to one month's wages, plaintiff did not have any literature on board ship to guide them. (Boland Deposition, 3/28/72, p. 17.)

When plaintiffs were preparing to sign off, a union representative, Tomas F. Mauricio, came on board to see whether the men had any complaints. There were no complaints, only queries about the extra 30 days' pay. Mauricio was not a lawyer. He could not advise plaintiffs of their rights and testified he could not secure a final resolution of the question from his immediate superior. He was not familiar with § 594 and had not had many years' experience as a patrolman. (Maurice Deposition, 3/28/72, pp. 4, 11-19.)

The court finds that plaintiffs were not made fully aware of their rights until they consulted their attorney on March 25, 1971. This court holds that with

respect to their claim for one month's additional wages, plaintiffs are not bound by the fact that they signed shipping articles consenting to termination of the voyage since, at the time of sign off, they were not fully advised of their rights under § 594 and were not represented by counsel, or any other knowledgeable person, at the time.

2) Defendant claims that by immediately signing up for the coastwise voyage, plaintiffs waived their rights under § 594. The court finds that plaintiffs were not advised that by signing on for the coastwise voyage they would thereby waive their claim under § 594. A seaman cannot waive any statutory right of which he is not fully informed. See Garrett v. Moore-McCormack Co., supra; Linquist v. SS Seatrain Maryland, 359 F.Supp. 663 (D. Md. 1973). Moreover, courts have ruled, in recent times, squarely on the question whether a seaman loses or waives his rights under § 594 by continuing in the employ of the vessel. They have ruled that a seaman does not lose or waive his right by continuing in the employ of the vessel. Newton v. Gulf Oil Corporation, 180 F.2d 491 (3rd Cir. 1950), cert. denied, 340 U. S. 814 (1950); Neil v. Gulf Oil Corporation, 101 F.Supp. 347 (E.D. Pa. 1951); Linquist v. SS

Seatrain Maryland, supra.

Defendant relies on an early case from this Court to support its waiver claim. The John R. Bergen, 122 Fed. 98 (S.D.N.Y. 1903). But even that case held that it must be shown that the new employment was the exact equivalent "in every respect" of the terminated voyage and constituted sufficient consideration. Here, unlike the seamen in the Bergen case, the voyage up the East Coast pursuant to Master's Articles as opposed to Foreign Articles was not "in every respect equal to that from which" plaintiffs were discharged. (Id. at 99-100.) This Court (MacMahon, J.) in denying plaintiffs' motion for summary judgment in this case ruled that plaintiffs' state of mind is also at issue on the question whether they waived their claims through the acceptance of new employment, citing Salyer v. American Export Isbrandtsen Lines, Inc., 262 F.Supp. 364 (S.D.N.Y. 1966). But the Court also recognized that a seaman cannot waive any right of which he is not fully knowledgeable, citing The SS "Standard" Bonici v. Standard Oil Co. of New Jersey, 103 F.2d 437 (2d Cir. 1939); Jones v. American Export Isbrandtsen Lines, 285 F.Supp. 345 (S.D.N.Y. 1968). And, as set forth above,

no one advised plaintiffs of their rights. See Garrett v. Moore-McCormack Co., supra. More specifically, no one advised plaintiffs that by signing up for the coastwise voyage they would be giving up any claim under § 594. 1/

Admittedly, not all of the plaintiffs signed up for the coastwise voyage. (Trial Transcript of Closing Argument Only pp. 4-5.) Defendant says that one plaintiff was terminated because "his permanent crew member came back." (Id. at 4.) Defendant concedes that as to the few plaintiffs who did not go on the coastwise voyage their rights were not waived, but, defendant claims, they consented to termination of the voyage and are, therefore, not entitled to a month's wages in addition to wages earned from January 6-21, 1971. (Id. at 5.)

3) Defendant claims that since those plaintiffs who did sign on for the coastwise voyage did not actually suffer any loss of wages, § 594 would be unconstitutional if applied to this case. Such application, says defendant, would deprive it of its property without due process of law and deny shipowners equal protection. Stated another way, defendant's claim is that plaintiffs should be required to prove damages before defendant can be held liable

under § 594. Defendant agrees, however, that where seamen have sustained lost wages through the termination of a voyage without their consent and through no fault of their own, the statute is properly applicable, and the injured seamen are limited to the liquidated damages decreed by the statute regardless of their actual loss. The Steel Trader, 275 U. S. 388 (1928).

The statute in question is predicated on the assumption that a breach of articles by a shipowner without a seaman's consent and without fault on the part of the seaman requires compensation, seamen being the wards of admiralty. Id. "The legislation was intended to afford seamen a simple, summary method of establishing and enforcing damages." Id. at 390. It is designed to relieve generally impecunious seaman of the burden and expense of bringing suits to recover such compensation for damages "which are frequently difficult of definite ascertainment but are fixed by statute as complete compensation for the breach." Vlavianos v. The Cypress, 171 F.2d 435, 439 (4th Cir. 1948); Linquist v. SS Seatrain Md., supra. It is simply a liquidated damages

provision which by operation of law becomes a part of every seaman's wage contract. The Steel Trader, supra, at 391. Such a contract provision is not unconstitutional, since it is remedial and not punitive. Id. See also Newton v. Gulf Oil Corporation, supra, at 494.

Plaintiffs are, therefore, entitled, in addition to wages received for the period January 6 to 21, 1971, to compensation equal to one month's wages. The Steel Trader, supra, at 390.

The Supreme Court, in referring to § 594, said in The Steel Trader, supra, at 391: "The provision that such sum may be recovered 'as if it were wages duly earned' permits the seaman to enforce payment by the special and summary methods provided for collecting his ordinary wages." The payments are, therefore, to be treated as wages duly earned by a seaman for the purposes of bringing suit, even though they are in fact liquidated damages. The next question then is whether they are to be treated as wages for the purposes of invoking the sanctions provided by 46 U.S.C. § 596 for refusal or neglect to pay a seaman his wages without sufficient cause as claimed by plaintiffs.

That statute provides as follows:

> "The master or owner of any vessel ...shall pay to every seaman his wages... in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; .... Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; ...."

In Monteiro v. Sociedad Maritima San Nicolas S.A., 280 F.2d 568, 573 (2d Cir.), cert. denied, 364 U.S. 915 (1960), the Second Circuit held that Section 596 applies only to wages.[2/]

Plaintiffs claim that the payment due under § 594 must be treated as wages for the purposes of § 596 but offer no authority in support of their contention. The Supreme Court's opinion in The Steel Trader, supra, does not support such a claim. As the District Court said in Newton v. Gulf Oil Corporation, 87 F.Supp. 210, 211 (E.D. Penn. 1949), "[t]he statute very carefully avoids calling the payment wages but describes it as 'a sum equal in amount to one month's wages as compensation'. The payment is in the nature of compensation or liquidated damages for a breach of contract. It 'satisfies all liability for breach of the contract of employment by wrongful discharge.' The Steel Trader.(citations omitted). The penalty was certainly not intended to attach to failure to pay such compensation."

The District Court in the Newton case, however, allowed interest on the one month's wages there awarded from the date of discharge. Id. In Linquist v. SS Seatrain Maryland, supra, at 666, interest at the rate of 6 per cent per annum from date of discharge was allowed in a § 594 case.

Defendant agrees that if interest is awarded the proper rate is 6%, pursuant to Section 5-501 of the New York General Obligations Law, but should be simple interest rather

than compounded interest. Defendant also agrees that the general rule is that interest is discretionary in admiralty in matters of breach of contract, citing The Scotland, 118 U. S. 507 (1885). Plaintiffs rely on more recent authority from this Circuit, e.g., O'Donnell Transportation Co. v. City New York, 215 F.2d 92, 95 (2d Cir. 1954); United States v. Panama Transport Co., 253 F.2d 758, 759 (2d Cir. 1958); Moore-McCormack Lines, Inc. v. Richardson, 295 F.2d 583, 592 (2d Cir. 1961); Lekas & Drivas Inc. v. Goulandris, 306 F.2d 426, 429 (2d Cir. 1962); Van Nievelt, et al. v. Cargo & Tankship Management Corp., 421 F.2d 1183 (2d Cir. 1970), supporting award of such interest in other kinds of admiralty actions. These cases hold that unless there are "exceptional circumstances" militating against awarding interest it should be awarded. The general rule in favor of allowing interest is much stronger where, as in the instant case, the damages are liquidated and are based upon a breach of contract. Van Nievelt, supra, at 1185.

Here there are no special circumstances militating against such an award. Plaintiffs have been wrongfully deprived of the use of the money for almost four years. Their counsel acted promptly at every stage of the proceeding. The only way

plaintiffs can be compensated for the delay in payment is through the requested award of 6% interest per annum. That rate of interest compounded annually is allowed.

Plaintiffs' claim for an award of attorney's fees in the exercise of this court's equity powers is as justifiable in this case as in Hall v. Cole, 412 U. S. 1 (1973) (action by dissident union members for reinstatement and damages for wrongful expulsion under federal protective statute) and Vaughan v. Atkinson, 369 U. S. 527 (1962) (recalcitrant failure to pay maintenance). If counsel fees are not awarded in a case of this kind where the maximum recovery is limited to one month's pay, the average seaman might be forced to forego his legal remedy by reason of the reluctance of competent counsel to undertake such cases. Failure to award counsel fees in a case such as this "would be tantamount to repealing the Act itself by frustrating its basic purpose." Hall v. Cole, supra, at 13. As noted above, the basic purpose of the statute involved here, § 594, is to aid generally impecunious seamen. It is manifestly consistent with such congressional purpose to award counsel fees in this kind of action. See Vaughan v. Atkinson, supra; Hall v. Cole, supra.

Plaintiffs' counsel, able and experienced, expended approximately 106 hours in preparation of this case from initial interview with plaintiffs through pleadings, motions, memoranda of law, depositions in New Orleans, Louisiana, Bayonne, New Jersey and locally, preparation for trial, the trial itself. (Affidavit of Ned Phillip filed 11/15/74). Thereafter post trial memoranda were required. Using the guidelines laid down in City of Detroit v. Grinnell Corporation, 495 F.2d 488 (2d Cir. 1974), the court awards counsel fees of $5,000.00.

Submit order on five days' notice.

Dated: New York, New York

December 18, 1974

CONSTANCE BAKER MOTLEY
U. S. D. J.

FOOTNOTES

1. Defendant claims that it was barred by this court from taking the depositions of all of the plaintiffs to determine their state of mind in acceping new employment. Almost two years prior to trial, on November 6, 1972, this court ruled on defendant's motion to take the depositions of all plaintiffs as follows:

> "The defendant is directed to take the deposition of the deputy commissioner of the United States Port of New Orleans, Wilber Ball, on or before January 31, 1973 and the deposition of the Union Representative by the same date. Thereafter, the court will rule on the necessity for taking any further depositions of the plaintiffs.
>
> N.Y., N.Y.
> November 6, 1972 So Ordered
>
> /s/Constance Baker Motley
> U. S. D. J."

The case was tried on October 29, 1974. A pretrial order was filed on August 29, 1974. At no time prior to the filing of such order did defendant renew its request with respect to plaintiffs' depositions. It was on the eve of trial that

FOOTNOTES, cont'd.

1, cont'd defendant suggested that it had been hampered by lack of pretrial testimony of all plaintiffs. (See Defendant's Brief ordered by court on issue of statute's constitutionality filed after September 20, 1974 pretrial conference.) No motion was made even then. The depositions of two of the plaintiffs, Boland and Chladek, had been taken by defendant as early as March 1, 1972.

In response to a question put to Chladek by defendant's counsel, Chladek made the following reply:

"Q. Was there a request made of you to sign off the articles?

* * *

A. O.K. The only way I can understand this question is, that if a ship comes into port from a foreign cruise or anything else like that, you have to sign off foreign articles in front of a commissioner. It's just routine and there's nothing else to know about it.

Q. Go ahead.

A. I mean, the mate comes out and tells everybody to sign off, so you go up there and you sign off, and you get paid. And at that time,

FOOTNOTES, cont'd

1, cont'd

I never had any knowledge whatsoever that I had any more money coming than what they gave me.

Q. All right.

A. And nobody told me."

(Chladek Deposition, pp. 40-41.)

Murray and Boland, along with one other, Ryan, were the plaintiffs' union delegates on board ship. They had been the only plaintiffs who talked to the Captain on board ship and to Mauricio. (Mauricio Deposition, 1/3/73, p. 13; Boland Deposition, 3/28/72, p. 6; Claybourn Deposition, 1/3/73, p.5.)

On his deposition plaintiff Boland was asked these questions by his counsel and he gave the following answers:

"Q. When the master told you that they were going to divert the vessel, did he ask your permission to divert the vessel?

A. No.

Q. Did you ever tell the master or anyone that you would refuse to accept the thirty days, an extra thirty days pay after the diversion of the vessel, that you would refuse to accept it; did you ever tell anyone you wouldn't take it?

FOOTNOTES, cont'd

1, cont'd

A. No.

Q. Did you ever give up any rights to that thirty days?

A. No.

Q. When you signed off the shipping articles, did the shipping commissioner tell you that by signing off you were giving up any rights to the thirty days' pay?

A. No, he did not tell me that.

Q. Did the shipping commissioner, at the time of signing off, read anything to you about giving up any rights?

A. No.

Q. Did anybody, at the time of sign-off, read anything to you about giving up any rights?

A. No.

Q. Did you ever intend to give up any rights when you signed off?

A. Certainly not.

Q. When you signed off, did you intend to sign off for the wages that you earned on the voyage and nothing else?

A. That's all we intended to do.

Q. So far as you know, did any of the crew members, including the other members of the committee, ever come up to you and say that they were willing to give up their rights to that thirty days' wages?

FOOTNOTES, contd

1, cont'd

A. No.

Q. So far as you know, was there any other crew member at the sign-off told that they were giving up their rights to the thirty days' wages?

A. No.

(at pp. 58-60.)

2. See e.g., Swain v. Isthmian Lines, Inc., 360 F.2d 81 (3rd Cir. 1966); Carribbean Federation Lines v. Dahl, 315 F.2d 370 (5th Cir., cert. denied, 375 U. S. 831 (1963); Mavromatis v. United Greek Shipowners Corp., 179 F.2d 310 (1st Cir. 1950); Venides v. United Greek Shipowners Corporation, 168 F.2d 681 (2d Cir. 1948); Mystic SS Co. v. Stromland, 20 F.2d 342 (4th Cir. 1927), cert. denied, 276 U. S. 618 (1928); Forster v. Oro Navigation Company, 128 F.Supp. 113 (S.D.N.Y. 1954), aff'd 228 F.2d 319 (2d Cir. 1955).

A 125

ORDER AND JUDGMENT

USDC
FILED
1-14-75
SDNY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, et al.,

Plaintiff,

- against -

TEXACO, INC.,

Defendant.

71 Civ. 2751 (CBM)

O R D E R &

JUDGEMENT #75,053

This action having come on for trial before the Court, Honorable Constance Baker Motley, District Judge, Presiding, and the issues having been duly tried, and the Court having made and duly filed its findings of fact and conclusions of law (Opinion # 41606) dated December 18, 1974, it is

ORDERED, ADJUDGED and DECREED that plaintiffs recover of defendant one month's wages together with interest at six percent on each said amount compounded from January 21, 1971 through December 20, 1974 as herein set forth:

Plaintiff	Monthly Wages	Interest Compounded at 6 % from 1/21/74 should be 1971 to 12/20/74	Total
E. B. Lewis	$672.43	$168.49	$840.92
H. D. Parsons	516.14	129.33	645.47
R. J. C. Murray	516.14	129.33	645.47
R. H. Lee	516.14	129.33	645.47
C. T. Chladek	504.41	126.39	630.80
R. C. Arch	504.41	126.39	630.80
H. L. Davis	504.41	126.39	630.80
"OC" Smith	399.78	100.17	499.95
K. Taylor	399.78	100.17	499.95
F. C. Kopas	573.28	143.64	716.92

J. H. Richmond, Jr.	$573.28	$143.64	$716.92
C. Q. Holt	771.10	193.21	964.31
W. P. Jacquet	705.06	176.66	881.72
A. Alves	705.06	176.66	881.72
A. F. Ryan	554.73	139.00	693.73
J. Kardos	554.73	139.00	693.73
T. J. O'Donovan	554.73	139.00	693.73
M. J. Urban	554.73	139.00	693.73
L. G. Fontenot	554.73	139.00	693.73
J. H. Blanchard	554.73	139.00	693.73
R. O. Medlock	554.73	139.00	693.73
M. Davis	463.05	116.02	579.07
A. Walker	463.05	116.02	579.07
J. A. Baron	463.05	116.02	579.07
J. Melvin	675.22	169.19	844.41
J. W. Thrower	606.01	151.85	757.86
J. McCall	524.74	131.48	656.22
H. F. McLean	396.97	99.47	496.44
J. H. Boland	386.44	96.83	483.27
T. W. Chastain, Jr.	386.44	96.83	483.27
P. Auster	386.44	96.83	483.27
M. C. Leblanc	386.44	96.83	483.27

and it is further

ORDERED, ADJUDGED and DECREED that plaintiffs recover of defendant the sum of Five Thousand ($5000.00) Dollars as counsel fees, and it is further

ORDERED ADJUDGED and DECREED that the cause of action under 46 U.S.C. Sec. 596 be and the same is hereby dismissed.

NY NY
JANUARY 13, 1975

s/ CBM
U. S. D. J.

Dated: New York, New York

JUDGEMENT ENTERED 1-15-75

s/ Raymond F Burghardt

DEFENDANT'S MOTION FOR A NEW TRIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

EARL B. LEWIS, HERBERT I. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,

Plaintiffs,

-against-

TEXACO INC.,

Defendant.

----------x

71 Civil 2751

(CBM)

DEFENDANT TEXACO INC.'S MOTION FOR A NEW TRIAL AND AMENDED AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of JAMES S. McMAHON, JR., sworn to the 24th day of January, 1975, the opinion of the Honorable Constance Baker Motley #41606 embracing the Court's findings of fact and conclusions of law filed with the Court on December 20, 1974, a copy of the judgment entered in this litigation and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Honorable Constance

Baker Motley at the Courthouse, Foley Square, City and State of New York on the 5th day of February, 1975, at 10:00 a.m. or as soon thereafter as counsel can be heard for an order pursuant to Rule 52(b) of the Federal Rules of Civil Procedure permitting amended and additional findings of fact and conclusions of law and awarding defendant judgment dismissing the complaint based on said amendments, or alternatively, pursuant to Rule 59 of the Federal Rules of Civil Procedure granting defendant a new trial on all the issues herein and pursuant to Rule 62(b) of the Federal Rules of Civil Procedure for a stay of proceedings to enforce the judgment entered herein on January 15, 1975 pending disposition of the motion herewith made and for such other, further and different relief as to the Court may seem just and proper in the premises.

Dated: New York, New York
January 24, 1975.

Yours, etc.,

BIGHAM ENGLAR JONES & HOUSTON

BY _____
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A Member of the Firm
Attorneys for Defendant,
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Attorney in Charge
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Department of Justice
26 Federal Plaza - Room 4048
New York, N.Y. 10007

AFFIDAVIT OF JAMES S. MC MAHON, JR. IN SUPPORT OF MOTION FOR A NEW TRIAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHLADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URBAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,

Plaintiffs,

-against-

TEXACO INC.,

Defendant.

71 Civil 2751

(CBM)

AFFIDAVIT IN SUPPORT OF MOTION FOR A NEW TRIAL AND AMENDED AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

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STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES S. McMAHON, JR., being duly sworn deposes and says:

That he is an attorney duly admitted to practice in this Honorable Court and an associate in the firm of Bigham Englar Jones & Houston, attorneys for defendant Texaco Inc. That as such and as trial attorney, he is fully familiar with all the pleadings and proceedings

heretofore had herein and makes this affidavit in support of the motion of Texaco Inc. for an order pursuant to Rule 52(b) of the Federal Rules of Civil Procedure permitting amended and additional findings of fact and conclusions of law, for an order pursuant to Rule 59 of the Federal Rules of Civil Procedure for a new trial and for a further order pursuant to Rule 62(b) of the Federal Rules of Civil Procedure for a stay of proceedings to enforce the judgment entered herein pending disposition of the motion herewith made to amend and add findings and conclusions and for a new trial.

STATEMENT OF FACTS

Plaintiffs, 32 in number, represent the entire unlicensed crew of the S.S. "TEXACO ILLINOIS" who instituted the within suit to recover a sum equivalent to one month's wage plus penalty wages, interest and counsel fees as the result of a claimed improper discharge under foreign articles from service aboard the "TEXACO ILLINOIS" on or about January 21, 1971 in Taft, Louisiana. The controversy was tried to the Court, Honorable Constance Baker Motley, sitting without a jury on October 29, 1974. At the end of the trial on that date, the Court, from the bench orally rendered its decision pertaining to the basic question of plaintiffs' entitlement to the sum equivalent to one month's wage in addition to that sum already earned, finding in

favor of the plaintiffs. Subsequently, the Court requested and received briefs submitted by counsel for plaintiffs and defendant concerning the issues of the so-called "two for one" penalty wage, pre-judgment interest and counsel fees. Thereafter on December 20, 1974, the Court rendered its written opinion in the form of findings of fact and conclusions of law on all the issues presented by this litigation. It is with respect to the opinion of the Court, both the oral decision from the bench and the subsequent written decision embracing the findings of fact and conclusions of law that the within motion is directed.

Briefly, the facts restated are that the plaintiffs, on January 6, 1971 signed foreign articles for a voyage aboard the "TEXACO ILLINOIS" from "Port Everglades, Florida, to one or more ports in the Gulf and/or Caribbean and Panama, and then one or more ports on the Pacific Coast within the Continental United States exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States for a period of time not exceeding ninety (90) days." Thereafter, the vessel, while it was in the Caribbean, was diverted to the Port of Trinidad and returned to the United States at Taft, Louisiana whereat the foreign articles were closed without protest on the part of any crewmember-plaintiff on January 21, 1971.

ISSUES PRESENTED

The defendant, throughout the entire litigation including during the course of trial and again herein, raises the following issues and contends that the testimony and exhibits adduced at the trial clearly and convincingly establish by a preponderance of the evidence that:

1. Plaintiffs are not entitled to recover herein because they consented in writing on the Federal Government Form of Shipping Articles to a termination of the voyage upon mutual consent;

2. Releases were obtained from these plaintiffs who, the evidence clearly indicates, fully knew their rights, releasing all further claims against Texaco Inc. Said releases were taken, not by Texaco Inc., but by the United States Government Deputy Shipping Commissioner specifically charged by statute with the duty of obtaining such releases or noting crewmember's protests. (46 U.S.C. §644);

3. Plaintiffs waived their rights under the statute in question by continuing in the employ of defendant in the same capacity and at the same rate of pay;

4. The statute under which the plaintiffs are presently seeking the instant relief (46 U.S.C. §594) as applied to the facts herein, is unconstitutional, for said statute in effect amounts to the imposition upon Texaco

Inc. of liquidated damages for a purported breach of a contract when in fact no actual or real damages whatsoever have been sustained and, therefore, under these circumstances amounts to the imposition of a penalty upon Texaco, forfeiture of its property, an unreasonable restraint upon Interstate Commerce and unjust enrichment and a windfall to the plaintiff-crewmembers. It is further tantamount to a deprivation of the property rights of Texaco Inc. without due process and equal protection of the laws. The statute, while stated to be in the Court's opinion remedial and not punitive is, under the facts of this litigation, remedial of no wrong or harm done or of any actual damages sustained;

5. As noted both in defendant's post-trial brief and again reiterated later herein, there are clearly special circumstances present requiring the denial of the award of interest;

6. As noted both in defendant's post-trial brief and again reiterated later herein, the conduct of Texaco Inc. with respect to this dispute was by no means arbitrary, capricious and unreasonable so as to require an award of attorney's fees. As is noted in defendant's post-trial brief, defendant requested but was not afforded a hearing on counsel fees.

DEFENDANT'S POSITION AS TO THE REQUESTED NEW TRIAL AND PROPOSED AMENDED AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant Texaco Inc. contends that certain of the Court's findings both of fact and law were clearly erroneous as a matter of law and as a result, defendant is entitled to judgment in its favor dismissing the complaint or alternatively, to a new trial. Hereinafter, defendant sets forth those findings it claims to be erroneous and the requested amendments and/or additions thereto.

A) On page two of the Court's opinion, it is stated that plaintiffs sought advice before signing-off the vessel from their union representative who had come on board ship regarding their entitlement to the month's wages. It is submitted that this statement should be amended and embellished upon to include not only the advices sought from Patrolman Mauricio aboard the vessel at the time of the sign-off, but also to properly reflect that the entire unlicensed crew, through its prime mover, Mr. Boland, contacted in writing the union port agents in Port Everglades, Florida and New Orleans, Louisiana respecting the question pertaining to the articles (Boland deposition page 8). Moreover, Texaco, through its labor relations superintendent Mr. John McCarthy, also contacted

Mr. Barasic at the union's headquarters in New York on or about January 18, 1971 and when he inquired if there would be any problem or dispute, was advised that Mr. Barasic would check it out and get right back well before the scheduled sign-off, but in fact received no response until several days after the sign-off was completed at which time he was told "You've got a problem." (McCarthy trial testimony).

The National Maritime Union was fully aware that the crew was complaining of the alleged specific problems with the articles well in advance of the actual date of termination of the articles on January 21, 1971. Texaco did not believe that the crew was entitled to the additional sum based upon its discussions with the New Orleans Shipping Commissioner and, forthrightly, through Captain Claybourn so informed the crew of its position well before the sign-off (Claybourn deposition and McCarthy trial transcript). The aforementioned silence of Mr. Barasic of the union's headquarters and the ultimate advices from Mr. George of the plaintiffs' own union as is noted in the Court's opinion that the crewmembers were not entitled to the additional one month's sum, all indicate there was substantial awareness and discussions of plaintiffs' rights by all interests concerned well before the termination date. Texaco was entitled to

rely upon the foregoing responses of the union representatives who were acting for and on behalf of its crewmembers.

Hardly, can it be said that in light of the union's own advices that it received on this subject, Texaco was acting in an arbitrary, unreasonable and capricious manner. This proposed finding of fact not only goes to the heart of the issue as to plaintiffs' state of mind, but it also makes unsound the Court's conclusion of law on the interest and the attorney fees awarded for it is both a special circumstance, removing plaintiffs' right to interest and clearly absolves Texaco from any arbitrary, unreasonable and capricious finding made with respect to this entire matter thus precluding any award for counsel fees under the doctrine of Vaughan v. Atkinson 369 U.S. 527. How can Texaco's conduct in light of this state of facts be considered recalcitrant so as to require an award for counsel fees?

Texaco herein was not dealing merely across the table with so-called poor, uninformed seamen who can only look to the Admiralty Courts as wards for their protection. What, in effect, Texaco was dealing with was a concerted union members' action to gain the extra 30 days wages when the union officials themselves at the time of sign-off agreed that their members were not entitled to this sum.

Each of these plaintiffs was represented by and acting through a union representative aboard the vessel who already had advised the Deputy Shipping Commissioner and the Master of the vessel that a higher union representative, Mr. Tex George had stated that he did not believe the union members were entitled to the additional 30 days wages. There is a basic legal concept involved in a situation as this, namely that entities such as Texaco who deal with a union are justified in relying on the words and actions of its representatives acting within the scope of their union authority. Lowe v. Feldman 11 Misc.2nd 8, 168 N.Y.S.2d 674 affd. 6 AD2nd 684, 174 N.Y.S.2d 949.

B) On page three of the opinion, the finding that "There had been talk among plaintiffs concerning their entitlement to such a payment on board ship, after learning that the ship was being diverted, but that they had no specific knowledge of their rights" (Chladek dep. 3/28/72 pp. 22-27).

It is respectfully submitted that this finding is clearly erroneous. To find support for this statement the Court has relied upon the deposition of crewmember Clarence Chladek. It clearly appears from Mr. Chladek's own testimony that he was one of the least involved crewmembers in this dispute and had little knowledge of

the events leading up thereto. What went on amongst the unlicensed crewmembers between the time the diversion was make known to them by Captain Claybourn is unknown directly to Texaco and, therefore, Texaco, through its counsel, has endeavored to ascertain those events through the deposition of Joseph Boland who was the union ship's chairman for the entire unlicensed crew and steward's department delegate (Boland dep. pg. 5). It is obvious that Joseph Boland was one of the three prime movers, if not the prime mover behind the events leading up to this entire dispute (See Boland's entire deposition testimony, defendant's Exhibit B, the ship's committee letter to its union headquarters and defendant's Exhibit C, the report of the meeting of the ship's committee for January, 1971). By contrast, the Court has referred in depth to the deposition of Mr. Chladek for the finding that there had merely been talk among plaintiffs concerning entitlement to such a payment on board ship and that they were not aware of their rights when in fact Mr. Chladek did not even know there was a dispute or "incident involved until lately" (Chladek dep. pg. 6 lines 11-16), and never even knew of the commencement of the instant lawsuit in his name until he was told of it by Captain Claybourn (Chladek dep. pg. 53). Moreover, there were two crucial meetings held by the unlicensed crew prior to the docking at Taft to the knowledge of the defendant at which the plaintiffs' full awareness and

knowledge of their rights under 46 U.S.C. §594 became evident. The most important of these meetings occurred shipboard immediately prior to the initiation of the termination of foreign articles. The termination of the foreign articles were held in abeyance at the request of Mr. Boland (Boland dep. pp. 33-37). Mr. Chladek's testimony can hardly be pointed to as establishing by a preponderance of the evidence that the crewmembers were unaware of their rights when he admits in his deposition that immediately prior to sign-off, a meeting was held at which he was not present (Chladek dep. pg. 43 line 15).

If anything, the unlicensed crew were fully aware of their rights including their necessity to protest formally to the Shipping Commissioner. This point is again made abundantly clear referring to the deposition of the prime mover behind this lawsuit, Joseph Boland, who clearly and unequivocally records his awareness of the necessity of lodging a protest by stating that first the union representative, Mauricio (Boland dep. pg. 38 line 4) and thereafter he, himself (Boland dep. pg. 45 line 23 to pg. 46 line 13) personally stated both to the Captain and Shipping Commissioner at the actual sign-off that they were signing-off under protest. Nevertheless, the testimony of the Shipping Commissioner, who unquestionably is the only independent and impartial witness to testify in this

litigation, unequivocally states that no protest of any nature whatsoever was made to him (Ball dep. pg. 11 line 21 to pg. 12 line 11). Moreover, the Deputy Shipping Commissioner's deposition unquestionably establishes that a seaman may note a protest to him on any dispute involving the termination of the articles even beyond earned wages (Ball dep. pg. 11 lines 12-20).

It is submitted that the evidence clearly and convincingly establishes that the unlicensed crewmembers were fully aware of their rights, fully aware of the necessity to protest to the Shipping Commissioner and while claiming to have done so in order to come within the Rule of Newton v. Gulf Oil Corp. 180 F2nd 491, have failed based upon the impartial testimony of Deputy Shipping Commissioner Ball to have done so. Moreover, only two plaintiffs have testified one of whom, Mr. Boland, the evident leader of the unlicensed crew, claims to have so protested. Defendant again contends that under the ruling of this very District Court in Jones v. American Export Isbrandtsen Lines, Inc. 285 F.Supp. 345, the burden was upon each individual plaintiff having signed-off the articles to establish lack of mutual consent and unfairness of the release contained thereon. The weight of the evidence even as to the two plaintiffs who have testified is clearly against all the plaintiffs. Under the Jones decision, it seems undisputable that the

only burden defendant was required to discharge was that it was free of fraud and coercion. All the testimony and exhibits on the trial clearly point to the fact that Texaco was free of any such fraud or coercion. Defendant dealt more than even-handedly with each of the plaintiffs in that it permitted them prior to sign-off to contact their union officials, permitted a union official to board the vessel, held up the termination of articles, permitted them to conduct a meeting and thereafter proceed with the sign-off at their convenience. Plaintiffs' own senior union official, Tex George in New Orleans, as noted in the Court's opinion even agreed that these plaintiffs were not entitled to the additional month's sum.

Defendant also again raises the question of the fairness of the trial it was accorded should the Court determine that the Rule of the Jones case is not the applicable law. As noted in footnote #1 of the Court's opinion, the defendant had earlier twice requested the Court to take the depositions of all the plaintiffs. To review briefly the history of this litigation when the litigation was first instituted on or about June 22, 1971, defendant simultaneously, with the service of its answer, noticed the oral depositions of all the plaintiffs. It was then immediately met with the argument upon motion by the plaintiffs for a protective order that it was not entitled to such depositions (even though the plaintiffs

contended all along that the proof of the release was upon Texaco based upon the requirements of Garrett v. Moore McCormack Company Inc. 317 U.S. 239). Plaintiffs' motion was denied and an orderly schedule was set up to proceed with the taking of such depositions as contained in a report and recommendation filed by Magistrate Goettel dated November 23, 1971 and confirmed in two orders by Judge Gurfein dated December 3 and December 11, 1971 After nearly a year passed, defendant, having only two plaintiffs' depositions in hand again moved diligently upon the earlier order to dismiss pursuant to F.R.C.P. 37. The motion came on before District Judge Motley and contained precisely the "state of mind" arguments warranting the taking of these depositions that the Court now determines is a keystone of its opinion on the merits. Nevertheless, the motion to take the depositions of the remainder of the plaintiffs was denied with the direction that Texaco is now only to take three witnesses. What this order in fact did was to take away from Texaco the earlier decision of Magistrate Goettel and the confirming order of Judge Gurfein. While the order of the Court dated November 6, 1972 does state that the defendant could make a further application for the taking of additional plaintiffs' depositions upon a showing of necessity therefor, defendant questions what more it could have shown to support such necessity than what it already

twice had done on the initial motion before Magistrate Goettel and Federal District Judge Gurfein, and the subsequent motion before Federal District Judge Motley. The very basis for defendant's opposition to plaintiffs' motion for a protective order before Judge Gurfein and its subsequent motion to dismiss before Judge Motley was that if defendant be required to prove "state of mind" of these plaintiffs which it does not concede it must do under Jones, then it is of necessity required to have each of these plaintiffs' depositions. It is in the denial of this right that defendant contends it was not afforded a fair trial.

C) The Court's finding of fact on pages three and four of the opinion that the union representative, Mauricio advised the Captain that the men were signing-off under protest and then left the vessel, should be amended to include the finding based upon Capt. Claybourn's deposition (Pg. 6) that at the time of the termination of the articles, no protest was made to the Captain by any member of the crew or representative of the crew regarding the termination of the articles. Specifically, on page 20, lines 9-12 of Capt. Claybourn's deposition, the Captain was directly asked whether a protest was made to him by patrolman Mauricio or anyone else with respect to 30 days extra pay and his answer

was simply, "no." Furthermore, the Court itself on page nine of its opinion, finds that there were no complaints, only inquiries as to the 30 days pay.

It is, therefore, submitted that there is no basis in fact or in law whatsoever in the record for the Court's finding on page six of its opinion that there was an oral protest by the union representative to the Captain. Defendant contends that such a finding is clearly erroneous and even if there had been such a proper factual finding, an oral protest to the Captain is insufficient as the protest must be directed to the Shipping Commissioner who is the only proper Governmental official to whom same can be directed and who can note such protests.

Moreover, the attendant finding of the Court on page six that plaintiffs did not know of their right as noted in subsection b hereof is clearly erroneous as the entire deposition of Mr. Boland unquestionably reflects that the unlicensed crewmembers knew their rights and specifically discussed them at meetings of the unlicensed crew well before the vessel ever docked at Taft, Louisiana. The plaintiffs herein can not have it both ways--either they are to be believed that they knew of their rights and protested to Shipping Commissioner Ball as Mr. Boland, their leader testified to, or the testimony of Mr. Ball, the only impartial witness, is to be believed that they

failed to make any protest to him after obviously having known of their rights and the need to protest as again the entire deposition of Mr. Boland indicates.

Furthermore, the defendant assesses as clearly erroneous the fact that the Court has accorded little, if any, weight to the presence of and the role played by the Coast Guard Deputy Shipping Commissioner aboard the "TEXACO ILLINOIS" throughout its opinion. It is only by reason of archaic Maritime statutes in the first place that defendant was required to open foreign articles when intending only to voyage from a United States port on the Eastern seaboard and Gulf of Mexico to the West Coast of the United States. It is the Government form of shipping articles printed by the United States Printing Office, as to the use of which Texaco has no choice, which employs lengthy statutory quctations of which Section 594 is evidently not a part as noted by the Court.

It is, therefore, Texaco's position that as it is only through the employment of the foreign articles that the application of Section 46 U.S.C. §594 may arise, it is, therefore, the United States Shipping Commissioner's function and not that of Texaco to properly inform the crewmembers of any prospective rights, duties and obligations emanating from the use of these articles. Thus, it is submitted that decisions on releases such as Garrett v.

Moore McCormack Company Inc. 317 U.S. 239, The S.S. "STANDARD BONICI" v. Standard Oil Co. of New Jersey 103 F2nd 437 (2nd Cir.-1939) have no place in determining the validity of releases taken not by the shipowner, but by and before a United States Shipping Commissioner and, as in this case, following lengthy consultations by crewmembers with their own union officials. It appears that the holding of the Jones case, supra from this very District Court recognized this distinction in seamen's releases and properly applied it.

D) The Court's oral finding rendered from the bench at the conclusion of trial on October 29, 1974 that the opinion of United States District Judge MacMahon denying plaintiffs' earlier motion for summary judgment limited the issues on the plenary trial is clearly erroneous. It is respectfully submitted that any earlier determination made by Judge MacMahon in denying said motion other than the necessary determination that there existed a question of fact requiring denial of the motion for summary judgment is purely dicta and should, in no way limit the issues on the main trial. Otherwise, if such were the case, defendant would be put in the anomalous position of having to seek 28 U.S.C. §1292 certification to appeal a motion for summary judgment upon which it had prevailed.

E) The Court's finding on page 11 that plaintiffs had not waived their rights unless it is shown that the new employment is equivalent "in every respect" is clearly erroneous and constitutes a strained legal interpretation. The finding should merely require that when a seaman immediately upon termination of the foreign articles, receives new employment with the same shipowner at the same rating for the same rate of pay as is the case under the facts herein (See Boland and Claybourn dep. testimony and defendant's Exhibit E) the same is all that is required for a waiver of any right under Section 594 failing any protest being made to the Coast Guard representative by the seamen at the time of termination of the foreign articles. To require that for such a waiver to be effective, the voyage under the new employment must be, in effect, the same as under the terminated foreign articles would, in practice, remove any possibility whatever of a waiver in every case for if the voyage was required to be the same, there would be few, if any, situations necessitating the termination of the foreign articles in the first place.

F) Defendant again reiterates its arguments made in its pre-trial and post-trial briefs that the statute in question as applied to the facts herein, is unconstitutional where as here, it is held to be remedial of no actual wage loss or other damage sustained by these

plaintiffs. Moreover, the argument made in the earlier briefs that the statute as applied is unconstitutional and that to apply it to the facts herein evades the Congressional intent of the lawmakers, is further fortified by the case of Monteiro v. Sociedad Maritima San Nicolas S.A. 280 F2nd 568, cited by the Court in its opinion wherein Circuit Judge Friendly, in discussing the Congressional purpose behind the sister Sections to 594, namely, Sections 596 and 597, states at pg. 574 that "It is true that one purpose of §§596 and 597 was to prevent a seaman's being left destitute at and consequently a charge upon the harbor where he debarked***." It is submitted that Congress never intended for the subject statute to be employed for the purpose it is now being used and the Court's findings and conclusions should accordingly be amended to reflect such intent.

The pernicious and constitutionally unpalpable result of the use of this statute herein is further emphasized when one considers that Texaco Inc. is now being assessed for a sum approximating $25,000 when these plaintiffs have in fact sustained no real or actual damages (See judgment entered herein).

G) Texaco requests that the Court's statement at the top of page 13 of its opinion that "defendant agrees, however, that where seamen have sustained lost wages

through the termination of a voyage without their consent and through no fault of their own, the statute is properly applicable, and the injured seamen are limited to the liquidated damages decreed by the statute regardless of their actual loss" should be amended in part to read not "regardless", but "only where there is actual loss."

H) Defendant requests that the Court amend its findings to delete the award of interest and counsel fees.

a) Interest should not be awarded for as noted in The Steel Trader 275 U.S. 388 and as recited on page 16 of this Court's opinion, the sum equivalent to one month's wages satisfies all liability for breach of contract of employment by wrongful discharge. Certainly, this is a special circumstance requiring the denial of an award for interest herein as are the other numerous factors above noted in this affidavit.

b) Counsel fees should not be awarded for as noted in sections A through C herein, the failure of Texaco to pay the sum sought without the necessity of this litigation can not be considered arbitrary, unreasonable and recalcitrant, particularly when the plaintiffs' own union and the Coast Guard Shipping Commissioner from whom Texaco solicited advice, both did not believe that these plaintiffs were entitled to such sum. Moreover, the

purpose cited by the Court on page 18 of its opinion that the "average seaman might be forced to forego his legal remedy" is not at all the state of facts present herein. These plaintiffs are acting through a union, the National Maritime Union and are represented by the office of the union's general counsel, attorney Abraham Freedman. There is not even any evidence in the record that the plaintiffs are being charged any legal fee which is to be allocated against their recovery. This is one of the points defendant wished to inquire into on the hearing as to counsel fees as requested in its post-trial brief. Furthermore, and again in reference to The Steel Trader decision, the one month's sum was intended to satisfy all the shipowner's liability.

WHEREFORE, it is respectfully requested that defendant Texaco Inc.'s motion for amended and additional findings of fact and conclusions of law be granted and that the Court thereupon vacate the judgment entered herein in favor of the plaintiffs and direct entry of judgment in favor of defendant, or in the alternative, that defendant be awarded a new trial and that it have such different and further relief as the justice of the cause may require.

James S. McMahon, Jr.

(Sworn to January 24, 1975) JAMES S. McMAHON, JR.

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ORDER ENDORSED ON MOTION TO AMEND THE FINDINGS,
MOTLEY, U.S.D.J.

The within motion made by defendant for an order amending the findings or in the alternative for a new trial and for a stay of proceeding pending the motion of the motion is denied

M.y M.y So Ordered

February 25 '75 Constance Baker Motley

U.S.D.J.

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JAN 24 1975
ADMIRALTY SEC.
U.S.D.J.
NEW YORK

U.S. DISTRICT COURT
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S.D. OF N.Y.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EARL B. LEWIS, HERBERT D. PARSONS, ROBERT J.C. MURRAY, RUTHVEN H. LEE, CLARENCE T. CHIADEK, ROBERT C. ARCH, HARRY L. DAVIS, "O" "C" SMITH, KENNETH TAYLOR, FRANCIS C. KOPAS, JAMES H. RICHMOND, JR., CULVER Q. HOLT, WILLIE P. JACQUET, ANTHONY ALVES, ALBERT F. RYAN, JOHN KARDOS, TIMOTHY J. O'DONOVAN, MARTIN J. URGAN, LOUIS G. FONTENOT, JACQUES H. BLANCHARD, ROBERT O. MEDLOCK, MONICO DAVIS, ATHENS WALKER, JOSEPH A. BARON, MELVIN JAMES, JOE W. THROWER, JUNIOUS McCALL, HAROLD F. McLEAN, JOSEPH H. BOLAND, THOMAS W. CHASTAIN, JR., PHILIP AUSTER, MAURICE C. LEBLANC,	NOTICE OF APPEAL 71 Civil 2751 (CBM)
-Plaintiffs,	
-against-	
TEXACO INC.,	
Defendant.	

S I R S :

PLEASE TAKE NOTICE that the defendant, Texaco Inc. hereby appeals to the United States Court of Appeals, Second Circuit from that part of the judgment dated January 13, 1975 and entered with the Clerk of the United States District Court, Southern District of New York on January 15, 1975 insofar as said judgment awards a sum equivalent to one month's wages together with interest and counsel fees in favor of the plaintiffs herein against defendant Texaco Inc., and from the order of United States District Judge Motley dated February 28, 1975 and entered with the Clerk of the Court on March 4, 1975 denying

defendant's post trial motions to amend the findings of fact and conclusions of law or alternatively for a new trial and defendant further appeals from the opinions of United States District Judge Motley orally rendered from the bench on October 29, 1974 and in writing on December 18, 1974 insofar as same award the aforesaid one month's wages, interest and counsel fees, and defendant further appeals from the memorandum decision of United States District Judge MacMahon dated February 7, 1972 and entered with the Clerk of the aforesaid Court on the said date denying plaintiffs' motion for summary judgment insofar as the issues set forth in said memorandum opinion were held to be controlling by the trial Judge upon the plenary trial, and defendant further appeals from the order of United States District Judge Motley dated November 6, 1972 and entered with the Clerk of the Court on said date denying defendant's motion to dismiss plaintiffs' complaint for failure of the plaintiffs to complete discovery in accordance with the earlier orders entered by the Court or, alternatively, to compel further discovery as stated therein.

Yours, etc.,

Dated: New York, New York
March 27, 1975

BIGHAM ENGLAR JONES & HOUSTON

BY JOHN L. QUINLAN
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TO:

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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EARL B. LEWIS, et al., :

Plaintiffs, :

-against- : 71 Civil 2751

TEXACO, INC., :

Defendant. :

----------x

Before:

HON. CONSTANCE BAKER MOTLEY,

District Judge

New York, New York
October 29, 1974 - 10:30 a.m.

APPEARANCES:

ABRAHAM E. FREEDMAN, ESQ.
Attorney for Plaintiffs
By: NED R. PHILLIPS, ESQ., of Counsel

BIGHAM, ENGLAR, JONES & HOUSTON, ESQS.
Attorneys for Defendant
By: JAMES McMAHON, ESQ., of Counsel

(In open court.)

THE CLERK: Earl B. Lewis, and others, versus Texaco, Inc.

Plaintiff ready?

MR. PHILLIPS: Plaintiff is ready.

THE COURT: The Court will require each party to give a brief opening statement setting forth exactly what you intend to prove by your several witnesses.

MR. PHILLIPS: If it please the Court, this is an action by 32 seamen plaintiffs who signed on a vessel, the TEXACO ILLINOIS, operated by Texaco, Inc.

This is a claim for one month's wages under Statute 46 U.S.C. 594, which provides that where seamen have been improperly discharged without their consent and without fault on their part prior to their earning one month's wages, then they are entitled to an additional month's wages, and these additional month's wages shall be deemed wages as though earned within the meaning of the companion statutes, which is specifically as relevant here 46 U.S.C. 596, which provides that where payment of seamen's wages is delayed, they shall be entitled to two days' pay for each day that the payment is delayed.

The proof in this case, and I think much of it is undisputed, is that the seamen signed on under articles which

provided for a trip to the West Coast, that within less than 15 days there was a diversion. They signed off on either the 15th or 16th day. The company refused and has refused to make any payment of the claim for the 30 days' wages.

There will be evidence that on the shipping articles there is release language. However, the evidence will clearly show that at no time did the plaintiff seamen ever intend to give up their right to this claim and that they were never informed of their right to this claim.

I think the law is fairly clear that any release to be valid must be for some consideration and that the release language in the articles has been held to be meaningless or limited only to the wages earned as of the time, not to any future claim.

The claim is also for the two-for-one wages. We are claiming interest and counsel fees, since this is a matter exclusively in admiralty.

I think that the issues must be limited to those set forth by Judge McMahon in his memorandum opinion where he described the only issues to be decided is the state of mind of the plaintiffs, namely whether they knowingly, intentionally relinquished a known right. That will be the case for the plaintiff.

THE COURT: Mr. McMahon?

MR. McMAHON: Your Honor, my name is James McMahon. I am with the firm of Bigham, Englar, Jones & Houston, attorneys for the defendant.

Basically, as Mr. Phillips pointed out, your Honor, there is little in the way of facts in dispute here, although there are a few striking facts in dispute.

One of the key factors is whether a protest was made at the conclusion of the voyage that Mr. Phillips just mentioned on the shipping articles.

The testimony of the United States Government official who was present at the sign-off, Mr. Ball, will be heard or read into evidence, your Honor, and he said there was no protest made to him. The captain said there was no protest.

In fact, one of the unlicensed seamen who testified said there was no protest made to him on the articles. Mr. Boland, one of the other plaintiffs, who was a union delegate, and this is in effect a union suit, all the unlicensed crew of the NMU are suing here and are represented by the general counsel for the Maritime Union. Mr. Boland says he did make a protest to the captain and the shipping union. There is no protest.

The articles are here. The articles will be offered in evidence. There is none showing on them in any way of

protests. And certain other cases which I assume will be referred to in post-trial briefs turn strongly on the question of whether protests were made on the shipping articles. It imposes relying on the shipping company in that limited situation.

We claim a number of things. First, that the men did release their rights under these shipping articles. Again, the shipping articles have a release form on them.

There is law in this district by Judge Pollack, specifically the case of Jones versus Waterman Steamship, that -- I believe it is American Export, your Honor, not Waterman -- that the release is different than the run-of-the-mill personal injury release that a seaman signs in a maritime suit.

When a release is signed before a Shipping Commissioner, that release is prima facie evidence of its validity without the proof of anything more. I think the law on that is clear and there is a complete distinction between that type of release and the type of release where a seaman signs in a personal injury suit.

We intend to strongly rely on the Jones case from this very district, your Honor, for that position.

I must admit that earlier in this lawsuit we had brought on a motion because the argument is that state of

mind is in issue here, we had brought on a motion before Magistrate Goettel who rendered a lengthy report asking for depositions of all these plaintiffs, we weren't given these depositions, your Honor, and an order confirming Magistrate Goettel's report by Judge Gurfein -- thereafter at your Honor's direction, following a further motion to compel those depositions pursuant to the earlier order of the Court, your Honor directed that they not go forward but only the depositions of the shipping commissioner, the captain and the union official who was aboard the ship.

I am confronted with the problem that I feel I have been prevented and my client has been prevented from attempting to show state of mind, if that be required. I don't think that is required, your Honor, and I think your Honor will see that from reading the Jones case. I think that I simply have to prove the release. Then it is on these plaintiffs to prove state of mind, if it be necessary.

I can't emphasize too strongly that I feel this release is totally different than the maritime personal injury release and the questions that evolved from it in proving that release.

We also contend and very strongly, as your Honor knows, that the men remained in our employ, that by doing so they waived any right, and it is a question, of course, again,

of their knowledge that they were so waiving the right. The Captain Claybourn's deposition indicated to the union and the delegate who was aboard the ship, whose testimony we have here, that he advised them that he was going to pay them one for one and he would not consider anything more, and that he believed that --

THE COURT: What is one for one?

MR. McMAHON: That's the argument here. There is no dispute these men were paid, your Honor. They sailed on our ship under these foreign articles, they sailed a long time, but under the period of the articles they sailed from January 6th to January 21st when the articles were terminated. There is no question here that they were paid one day's work for one day's pay.

THE COURT: Normally they were paid one day's pay --

MR. McMAHON: That is not in issue here since that involves in the question Mr. Phillips brought up about the two-for-one payment, the penalty wage, when the ship owner wrongfully withholds a man's wage, we contend it does not apply to this section because if this section is in itself applied against Texaco here, your Honor, that will be a penalty in itself, because following January 21st, following what we claim is a fiction termination of these articles, the vessel continued in coast-wise service, most of the men

remained aboard the ship and, of course, were paid.

So that anything additional they received is a windfall, unjust enrichment, which evoked the constitutional argument, your Honor, that we submitted a brief on pursuant to your direction.

THE COURT: I read that, and I think the record should reflect that the Attorney General was notified of your claim by the Chief Judge of this Court. Did you get a copy of the letter?

MR. McMAHON: Yes, your Honor, I did.

THE COURT: I don't know whether it is presently in the file, but I have it in my chambers. A copy of the letter that the Chief Judge wrote to the Attorney General notifying them that if they desire to intervene in this case, they should let me know. I have the -- the record should reflect that I have received no reply from the Attorney General.

MR. McMAHON: In addition to the letter, I believe, there was also a certificate issued by the Chief Judge.

THE COURT: Yes, as required by the rule.

MR. McMAHON: We oppose the two-for-one claim. If this is applied in this situation, it is now a penalty assessed against Texaco for an earlier termination of the articles.

THE COURT: It is not simply a liquidated damages

statute?

MR. McMAHON: Your Honor, this is what I went into in my brief, if these men were discharged as this statute I believe originally started out to intend, I think, you go back to the days it was enacted in 1872, when a man would sail out of San Francisco and go under articles for a year or three months or what have you, go up the Amazon, be discharged there and left there, in that situation he is out of the employ of the ship owner. There there is liquidated damages. This statute is intended to remedy that situation.

The cases that have all evolved from this, and I don't find any constitutional issues raised in these cases, have indicated that when the men -- even where the men continue in the employ of the ship owner, they are still in certain circumstances entitled to this wage.

There I believe it is no longer liquidated damages because there are no damages, your Honor. These men have continued in Texaco's employ. They have really lost no money.

THE COURT: I think by your own statement, you said that some of them had not continued --

MR. McMAHON: I am going to put testimony on here, your Honor, I think there is three or four of them, that is all going to go into the record.

Some of them did not continue. All of them stayed

on January 21st but one and continued. The voyage went coastwise. Three or four of them got off within the technical month's time, which I don't dispute at this point. Of course, what I do dispute is even those men signed a release in the articles, your Honor, and under the Jones case even they can't recover.

So I am back to the initial premise. There is a release in the shipping articles, your Honor, and we claim that those men signed that release.

THE COURT: All of them signed the release?

MR. McMAHON: I have the release, the articles here. That's part of the articles. That release is not a Texaco release. That's a U.S. Government form.

THE COURT: It is your contention that they all signed the release?

MR. McMAHON: They did. It is shown. Their signatures are on there.

THE COURT: Release giving up their claim under this statute that we are talking about?

MR. McMAHON: All claims, that's right, your Honor, and Judge Pollack so held in the Jones case. It is clear.

Basically I think, your Honor, that's our contentions: the release issue, the question of waiver by continuing in our employment and, of course, the constitutional issue

I have subpoenaed here today, your Honor the articles, plus the official log. That came with the articles from the Coast Guard. The documents are kept together. I have a gentleman here from the Coast Guard. While it may be out of turn, I am not on my case yet, I would like to offer the articles and not keep the man.

THE COURT: No, I just want an opening statement. We are not on the receipt of any evidence at this point.

MR. MC MAHON: That is basically Texaco's position.

THE COURT: Plaintiff may proceed by calling its first witness.

MR. PHILLIPS: Your Honor, at this time, in view of the fact that there is one live witness, I have no objection to his being called out of turn solely for the purpose of laying a foundation for the offer of the shipping articles. He is the only live witness. I don't see any reason to keep him waiting.

MR. MC MAHON: Your Honor, I simply offer them, your Honor, have them marked and offered. These are a federal record. They have been subpoenaed here today. I offer them under the public record rule. I don't think it is necessary to put the man on the stand.

MR. PHILLIPS: I agree, your Honor. I made that offer to Mr. --

THE COURT: He is only offering to accommodate a witness, but if you think it is unnecessary to call him, then let's proceed. I gather there is no objection to the admission of this document.

MR. PHILLIPS: None whatsoever.

xxx (Defendant's Exhibit A received in evidence.)

MR. PHILLIPS: At this time, your Honor, I offer the testimony by deposition of a witness Clarence Chladek, held on March 1, 1972.

MR. MC MAHON: Your Honor, if I may be heard, there are going to be depositions read. I had originally indicated to counsel for the plaintiff that I would oppose the submission of these depositions.

I withdraw that objection. If the counsel wishes the depositions of all the witnesses to go in to your Honor, since this is a non-jury trial, for your Honor's reading, and perhaps post-trial briefing by counsel, I have no objection to that. I will stipulate to the entire testimony going in that way, your Honor.

When I first reviewed this I had indicated to counsel, it is my fault, that I was going to object to parts of them. I will still object to certain parts, I think we can cover it in post-trial briefs, to save the Court's time.

MR. PHILLIPS: No. I can't accept that. If he is still objecting to certain parts, I think I am entitled to know what the objections are so that they can be argued and ruled on by the Court.

THE COURT: You refer to a deposition in your hand. What is that deposition?

MR. PHILLIPS: This is the deposition of Clarence Chladek.

THE COURT: Who is he?

MR. PHILLIPS: He was a seaman on board the Texaco Illinois during the voyage.

THE COURT: You want to read part of that?

MR. PHILLIPS: Yes, your Honor.

THE COURT: Proceed.

MR. MC MAHON: I have here the originals in the depositions, only in the case of Chladek I don't have an office copy.

MR. PHILLIPS: Why don't you look over my shoulder and give the Court the original.

MR. MC MAHON: I would like to put a check mark on the original as to what Mr. Phillips is going to read so that I may cover the other portions.

THE COURT: You want to put a check mark on the originals? All right?

MR. MC MAHON: That's all. There are no other copies -- I have no office copy of it. I don't know what happened to it. I have copies of all the other ones.

THE COURT: You may use that. Let's go on.

MR. MC MAHON: May I hand you up the other ones?

THE COURT: Yes.

MR. PHILLIPS: Clarence Chladek, plaintiff herein, having been first duly sworn by the notary public, testified as follows, and this examination is by McMahon:

"Q What is your present address, Mr. Chladek?

"A My present address is P. O. Box 34 Cleremont, Minnesota."

Dropping down to line 19.

"Q In January, 1971, were you a member of the crew of the Texaco Illinois?

"A I was.

"Q In what capacity were you a crew member?

"A I was an A.B. in the deck department.

"Mr. Phillips: Can we stipulate that A.B. means able-bodied seaman?

"Mr. McMahon: Yes."

Turning now to page 16, line 4.

"Q Did there come a time when you were asked by personnel of the company to sign foreign articles for a

foreign voyage?

"A That is correct.

"Q In Port Everglades?

"A On January 6th, I believe it was, the ship was scheduled to go to the West Coast, and I signed foreign articles. They asked the crew to sign foreign articles, which we signed.

"Q Did everyone sign?

"A To my knowledge, everyone did."

Turning now to page 21, line 3.

"Q When did the crew first find out about the diversion?

"A We were going to the Panama Canal and the ship was diverted to Trinidad, but for all I know the ship may have gone to Trinidad and then the West Coast. Nobody even knew. The captain I don't think even -- the captain I don't even think really knew.

"Q You weren't scheduled to go to Trinidad originally, were you?"

MR. MC MAHON: Note my objection to the last part of the last response, and I move to strike it as irrelevant and immaterial, what the captain thought.

MR. PHILLIPS: I have no objection.

THE COURT: All right.

(Mr. Phillips continues reading.)

"Q You weren't scheduled to go to Trinidad originally, were you?

No. But according to the articles we could have gone to Trinidad and then gone to the West Coast too.

"Q When did you first become aware that there was a change in the voyage planned?

"A As far as the foreign articles are concerned?

"Q Yes.

"A When the ship left Trinidad and came back to the States.

"Q This is the first time you were aware of it?

"A Right."

Turning now to page 23, line 25.

"Q You are telling me there was a discussion about a month's wages before the vessel got back to the United States; is that correct?

"A Right. There were obviously some of these people had knowledge of something like this.

"Q This was at some meetings that were held on the ship?

"A No. They are private discussions about the ship, and then they finally had a meeting before we got in, and it was decided that it should be taken up with a patrolman or a man that was more qualified to find out whether or not this

money was due to the crew or not."

MR. MC MAHON: I again move to strike on the basis that this is hearsay. This is apparently referring to a discussion amongst unlicensed crew aboard the ship to which Texaco was not a party.

MR. PHILLIPS: I don't think Texaco has to be a party. This was a discussion in which he took part and he is a plaintiff.

THE COURT: Repeat that again.

MR. PHILLIPS: "No, they are private discussions about the ship, and then they finally had a meeting before we got in, and it was decided that it should be taken up with the patrolman or a man that was more qualified to find out whether or not this money was due to the crew or not."

THE COURT: You say that's hearsay?

MR. MC MAHON: As to this man. He already testified apparently that he doesn't know anything about what was going on here, that he was at a meeting where some of this came about, and evidently from this transcript already read this is not his determination to take it up.

THE COURT: He is telling us what happened at the meeting?

MR. PHILLIPS: He is telling what happened to him, a discussion in which he participated relating to an issue

before this Court.

MR. MC MAHON: He is telling what he heard at a meeting at which Texaco was not a part of, your Honor.

THE COURT: I see. What do you say to the objection, Mr. Phillips?

MR. PHILLIPS: I say that as a party, the issue in this case is the knowledge of the plaintiff seaman, and he is talking about discussions with the other parties, the other plaintiffs.

THE COURT: This goes to his state of mind rather than the truth of what was said?

MR. PHILLIPS: Yes, no question about that.

THE COURT: Overruled.

(Mr. Phillips continues reading.)

"Q Who conducted this meeting before the ship got in?

"A The delegates.

"Q It was led by the delegates?

"A Right. The delegates are in charge. I mean, your delegate is in charge of all the meetings aboard ship."

Turning now to page 25, line 15.

"Q Did you have any private discussions with anybody?

"A Well, I just questioned, when I heard a discussion going on about this incident, I mean I just questioned the guys about it, trying to learn more about it. You know, if

I was entitled to 30 days' pay, I wanted it. What the heck, I am not different than anybody else, you know, and that's, of course, all it amounted to."

Turning now to page 44 --

MR. MC MAHON: Again I move to strike that. It is unresponsive. That has nothing to do with the discussion. That has to do with what he thought in his own mind he is entitled to.

THE COURT: Yes, and that's what we have said. It goes to his state of mind.

MR. PHILLIPS: Turning now to page 44, line 4 -- excuse me, line 9.

"Q When you signed off the articles, who was present?

"A The captain and the Commissioner.

"Q When you say the Commissioner, who do you refer to?

"A The Shipping Commissioner, the man you signed off with."

Turning now to page 45, line 4.

"Q At any time prior to your signing off the articles, did you have any discussion with anybody about your execution of the articles, the termination of the articles?

"A No.

"Q Did anybody tell you anything?

"A No."

Turning now to page 46, line 13.

"Q When you signed off the articles, did you read any printed materials on the articles?

"A No.

"Q You mentioned that there was a Shipping Commissioner. That is a representative of the United States Government, is it not?

"A Right."

Turning now to line 24.

"Q Did he talk to you in any way?

"A No."

Turning now to page 60, line 18.

"Q Were you aware, Mr. Chladek, at the time of signing off that by signing off the articles it could constitute a release of any claim for wages against Texaco?

"A No.

"Q You weren't aware? Were you ever advised on any prior sign-off of foreign articles by any personnel of a shipping company or by any Shipping Commissioner or anyone that a signing off of the articles by you constituted a claim against the particular company?"

I think that that should have been release of claim. Do you agree, Mr. McMahon? That is your question.

MR. MC MAHON: It can be so amended. May I mark

that in the transcript?

THE COURT: Yes.

(Mr. Phillips continues reading.)

"A No.

"Q Constituted a release of any claim against a particular company for wages?

"A No."

THE COURT: That's been amended to read release of --

MR. PHILLIPS: No. The second question -- apparently Mr. McMahon amended his question following immediately, but I wanted the language to reflect the amendment in the first question.

Page 65, starting at line 25. This is now examination by myself.

"Q Mr. Chladek, when the vessel left Trinidad and before she went to Taft, Louisiana, did the captain request your permission to change and divert the foreign voyage to go to Louisiana?

"A No."

MR. MC MAHON: I object to that question. I don't see how it has any relevancy or bearing on this question. There is no question as to the illegality or legality of the diversion. I don't think there is any question that this plaintiff as an unlicensed member of the crew had any decision

or bearing on the question of the right of the company to divert the vessel for business purposes.

MR. PHILLIPS: Your Honor, the precise language of the statute is, and I quote that relevant phrase, "and without his consent," and this is offered to show that at no time did he consent to the diversion.

THE COURT: All right, proceed.

(Mr. Phillips continues reading.)

"Q Did any officer on board request your permission and consent to terminate this voyage before the end of 30 days?

"A No.

"Q At the time that you signed off these articles, did you note that you had a possible right to a claim for an additional month's wages over and above your earned wages?

"A No.

"Q Did the captain at any time tell you at or before the time of signing off that you might have had a possible claim for one month's wages because of the breach of the articles?

"A No.

"Q Did the Shipping Commissioner at any time tell you that by signing off you were giving up any right to one month's wages by reason of the breach of the articles?

"A No.

"Q Did the Shipping Commissioner tell you that by signing off you were giving up all claims that you had against the vessel or the owners and the vessel or the master?

"A No.

"Q Did the Shipping Commissioner ask you to read the paragraph which is at the head of the column in which you signed your name when you signed off the articles?

"A No.

"Q Did the captain ask you to read the paragraph which is at the head of the column where you signed off the articles at the time you signed off?

"A No.

"Q Did you ever intend to give up any possible claim for one month's wages by reason of the change in the shipping articles in the early termination of this voyage?"

MR. MC MAHON: Your Honor, there is an objection on the record as to the form of this question.

MR. PHILLIPS: I think Judge McMahon has clearly indicated that the question of state of mind --

THE COURT: Overruled.

(Mr. Phillips continues reading.)

"A No.

"Q When you remained on board that vessel for a day or a few hours or whatever period of time you remained on board

that vessel and continued in the employ of the steamship company, did you by remaining aboard intend to waive any claim which you might have had for 30 days' wages by reason of the change of the shipping articles?"

MR. MC MAHON: There is again another objection as to the form of the question, your Honor.

THE COURT: Overruled.

(Mr. Phillips continues reading.)

"A No.

"Q At or before the signing off, did anybody read to you a statute entitled 46 U.S.C. 594?

"A No.

"Q Did you at any time during your service on board the Texaco Illinois, or at any time prior thereto, ever have this paragraph which I am going to read to you read to you by anybody? I quote:

"'Any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation and may, on adducing evidence that is satisfactory to the Court hearing the case of having

been improperly discharged, recover such compensation as if it were wages duly earned.'

"Was that ever read to you at any time in your life before you were on the Texaco Illinois?

"A No.

"Q Has it ever been read to you since then?

"A Right now.

"Q This is the first time you ever heard this?

"A This is the first time."

That concludes the plaintiffs' offer with respect to Clarence Chladek.

MR. MC MAHON: Your Honor, I would move to strike all that part of the testimony of this plaintiff that goes to the state of mind.

Again, referring to the case of Judge Pollack in this district, I don't think that is an issue in this case. I think that issue is removed from the case and that release is prima facie valid --

THE COURT: As plaintiffs' counsel has pointed out, the law in this case is on the issues as defined by Judge McMahon in his summary judgment opinion or opinion on motion for summary judgment.

MR. MC MAHON: I don't accept the fact that he set that out. I object to --

THE COURT: He didn't set that out? On page 2 he says, "Plaintiffs claim that they did not consent and that the acceptance of new employment does not constitute a waiver of their rights under the statute, these are the only issues in contention here. Though they are primarily issues of law, there are factual questions related to them that are still unresolved, and therefore summary judgment is inappropriate.

"The basic question is the state of mind of the plaintiffs when the foreign voyage was terminated. Consent is a valid defense under 46 U.S.C. Section 594, but to establish it the defendant must show that it was given without any duress and with full knowledge of what it meant.

"Plaintiffs claim through the affidavit of their attorney that they did not understand what they were signing away, defendant offers the affidavit of an Assistant United States Shipping Commissioner to the effect that plaintiffs' union representative was present to provide them with the necessary information.

"Plaintiffs' state of mind is also at issue on the question of whether they waived their claims to the acceptance of new employment. Such actions may constitute a waiver under 46 U.S.C. Section 594.

"These issues of fact respecting both defenses offered in this action require a full development upon a

plenary trial."

So when you keep citing the decision of Judge Pollack, it is irrelevant because the Judge in this case has already framed those issues, and that's what we are proceeding on. We are not bound by Judge Pollack's decision, as you well know. Proceed.

MR. MC MAHON: If I may have my exception noted on the record.

THE COURT: It is unnecessary for you to note any exception at any time.

MR. PHILLIPS: Does counsel wish to offer cross at this time of Chladek?

MR. MC MAHON: I had intended to read most of the remainder of the deposition in, unless for the assistance of the Court it can be referred to the Court in post-trial briefs.

THE COURT: I thought you had certain portions you wanted to object to.

MR. MC MAHON: Not in this deposition. It is mainly coming up with regard to -- I suggest that all the depositions be handed up.

There is an instance being referred to about a prior situation involving Texaco where there was a discharge before the vessel ever sailed, and there has been testimony

in these depositions which I suspect will be referred to saying that apparently Texaco developed a course of conduct by this.

We object to that, your Honor. We believe that situation whether they paid --

THE COURT: You are talking so rapidly that, first, I don't think the reporter is getting one-eighth of it, and I can't hear you when you talk that rapidly. I lose half of what you are saying.

MR. MC MAHON: I apologize, your Honor.

There is an earlier situation involving the Texaco Georgia which is referred to in one or more of the depositions. Counsel for these plaintiffs is using that situation in attempting to submit it to the Court apparently as a -- to show a prior course of knowledge and conduct on the part of Texaco.

Texaco paid in that situation under the threat that the vessel would not sail, a threat made by the union. That also comes out in one of the other depositions.

We believe that that instance, the fact that they paid in that situation, is totally --

THE COURT: Is that referred to in this deposition?

MR. MC MAHON: No, sir.

THE COURT: Let's talk about this deposition and

get to that later. Do you want to offer the rest of the deposition?

MR. MC MAHON: Yes.

THE COURT: The entire deposition of Chladek is in.

MR. PHILLIPS: The next witness is Joseph H. Boland, who will also testify --

MR. MC MAHON: Again, to save the Court's time, that situation is not referred to in this deposition and I would be intending to read most of the remainder of this deposition, so I will be agreeable to offering the entire deposition to your Honor.

THE COURT: Read the parts that you want in the record.

MR. MC MAHON: Your Honor, you now have the originals of these other depositions before you.

MR. PHILLIPS: Starting at page 4, line 2: Joseph H. Boland, a plaintiff herein, having been first duly sworn by the notary public, and stating his place of residence as 1918 17th Street, Port Arthur, Texas, testified as follows. Examination by Mr. McMahon:

"Q Mr. Boland, on January 6, 1971 did you as a member of the crew of the Texaco Illinois sign articles for that vessel?

"A I signed articles for Panama and the West Coast,

yes.

"Q Was that on January 6, 1971?

"A The 6th of January.

"Q What capacity were you on that vessel?

"A Messman."

Skipping down to line 23.

"Q Are you a member of any union presently?

"A National Maritime Union.

"Q In January of 1971 were you a member of the same union?

"A Thirty-three years.

"Q What is your rating or seniority range in the union, whatever it was at the time on January 6, 1971?

"A I was ship's chairman.

"Q You were ship's chairman aboard the Texaco Illinois?

"A In the stewards department."

Dropping now to line 20 at page 5.

"Q Aboard that ship you tell me you were ship's chairman?

"A Yes.

"Q Were you also stewards' delegate?

"A Department delegage and ship's chairman.

"Q Would you define for the record what you mean by being ship's chairman?

"A Well, that's the ship's committee. Consists of the ship's committee, one man from each department, ship's delegate, to represent the crew in union activities aboard the ship.

"Q Besides being ship's chairman, you are the steward department delegate?

"A Yes."

Dropping down to line 25.

"Q There came a time sometime after January 6, 1971 when the vessel was diverted from its articles?

"A Yes."

Dropping down to line 16.

"Q How did you learn that she was being diverted?

"A The old man informed us.

"Q The old man, who is he?

"A Claybourn.

"Q Is that Captain Claybourn?

"A Right. Captain Claybourn. He was master.

"Q He told you the vessel was being diverted?

"A Yes, he informed the ship's committee."

Turning now to page 8, line 6.

"Q Did anyone, you or anyone else on the part of the ship's committee, say anything to the captain at that time about the diversion?

"A No, we didn't say anything about that, but I wrote letters. I wrote one to the port agent in Port Everglades, and I wrote one to the port agent in New Orleans, Louisiana. I mailed them in Trinidad."

Turning now to page 10, line 9.

"Q Did you ask in your letters for any redress or any assistance? Did you ask for any help in your letters?

"A Yes. We asked for a patrolman to meet the ship on arrival.

"Q Did you in those letters state that you felt you were entitled to money of any kind?

"A Why, sure. We felt that we were entitled to a month's pay, the way we see it.

"Q You stated that in those letters?

"A Yes.

"Q Who signed those letters?

"A The ship's committee.

"Q There were two letters, you told me.

"A Yes. One sent to each port agent.

"Q The port agent --"

MR. MC MAHON: I object again to the relevancy and materiality. Again, these are not letters sent to Texaco, and these constitute merely a claim by these men made to their union.

THE COURT: Overruled.

MR. PHILLIPS: Line 24.

"Q The port agent in each of those ports?

"A Yes.

"Q That port agent, by whom was he employed?

"A NMU."

Dropping down to line 25.

"Q When you were preparing the letters, did you talk to the captain, Captain Claybourn, about the situation?

"A No. All we done, we just stated that -- what we were going to do in the minutes of the meeting, and we gave him a copy of the minutes."

Turning now to page 14.

"Q Did the captain at any time tell you that he knew the ship was going to be diverted before it left Port Everglades?

"A No."

Page 15, line 18.

"Q On or about the fourth day you said you had a meeting with the crew?

"A Yes."

Turning now to page 21, line 19.

"Q Were there any other beefs discussed at this meeting except for this diversion?

"A No, I don't believe so."

Turning now to page 22, line 7.

"Q How was it brought out? Is there any way to bring it out? Did somebody write anything out?

"A Somebody gets up and says 'I got a beef. We are entitled to 30 days' pay.'

"Q Somebody presented a beef?

"A Yes.

"Q Who presented it?

"A I did.

"Q You presented it?

"A Yes.

"Q Who did you present it to?

"A Well, to the whole membership, the whole crew, minus the officers."

Turning now to page 28, at line 24.

"Q What was the topic of the vote? What was the question at issue? When all the votes are counted.

"A Well, the question was this. If they concurred with the 30 days' pay, that was the question.

"Q Was that the precise question?

"A Yes."

Dropping now to line 18.

"Q What was the result of the vote?

"A 100 percent.

"Q In favor of asking for the 30 days' pay?

"A Yes."

Turning now to page 40 -- I think I will skip to page 41, line 20.

"Q Going back now aboard the ship at the time of the sign-off, was there any discussion -- you told me generally that there was discussion had with the patrolman, the captain and the Shipping Commissioner. What did the Shipping Commissioner, to your knowledge, tell the patrolman?

"A He told the patrolman that as far as his instructions were that the union crew on the ship didn't have a beef.

"Q Is it at that point that the patrolman made a call to the agent George?

"A That's the point, when he informed the captain that he wouldn't pay the ship off until he made a call to the agent."

Turning now to page 44.

"Q Were you at the booth when he made the call?

"A Yes.

"Q Who was with you?

"A The other two.

"Q Murray and Ryan?

"A Ryan and Murray.

"Q Did he reach the agent George on the telephone?

"A Yes.

"Q Did you overhear parts of the conversation?

"A Yes, I overheard some of it.

"Q What is your recollection of what was said that you heard?"

MR. MC MAHON: Objection, your Honor. He is going to testify as to a conversation that I believe he overheard.

THE COURT: Yes. Overruled.

(Mr. Phillips continues reading.)

"A Well, Tex told him --

"Q This is Mr. George that you are referring to?

"A -- told him to go ahead and pay off, and he would consult the union lawyers next day, and I don't know whether he consulted the union lawyers or not, but the next day before we left I called New Orleans myself and talked to George and George informed me that he would, you know, proceed the beef further, and I also told him that the crew was not satisfied the way the beef was handled.

"Q When you say you were not satisfied, who were you not satisfied with?

"A The whole crew.

'Q Who were you not satisfied with?

"A Not satisfied the way the beef was handled.

"Q By the patrolman?

"A Yes.

"Q This is the following day after the sign-off?

"A Yes. I also told him that I was going to turn it over to the contract enforcement in New York, which I did. That's when the lawyers had it.

"Q That's the legal division of the NMU; is that right?

"A Yes.

"Q Was there any discussion at the time, do you recall, about signing articles off under protest?

"A We signed off under protest.

"Q You did?

"A Yes.

"Q Who did you protest to?

"A Protested to the captain and the Commissioner.

"Q Who delivered the protest? Who was the one who said they were protesting?

"A The ship's committee.

"Q You said you were protesting?

"A Yes.

"Q Who did you say that to?

"A To the Commissioner and the captain, both of them, under protest.

"Q Is there any procedure when you protest that you

know of to be followed when you protest?

"A That's all.

"Q Are there any minutes made of a protest on the articles?

"A Not that I know of."

Turning now to page 48, line 22.

"Q Did you use the word protest?

"A Yes, I did.

"Q You used it to the Shipping Commissioner?

"A Yes.

"Q You used it to the captain?

"A Yes, and to the union agent too."

Dropping to line 6.

"Q Did you use it to the union agent in the captain's office?

"A That's where we were signing off.

"Q That's where you used the word protest to the union agent?

"A Yes.

"Q Did each of the other delegates also use the word protest?

"A That's right.

"Q Where was the crew, the rest of the unlicensed crew, when you were up in the captain's office?

"A Lined up, waiting.

"Q Outside the office?

"A Yes.

"Q And was the door closed? Could they overhear the conversation?

"A The whole crew could hear.

"Q They heard what was going on?

"A Yes.

"Q When each man came to sign off, did each man say he was signing off under protest?

"A I don't think so. I don't see why they should.

"Q You didn't tell them to?

"A No.

"Q Nor did the union patrolman tell them to?

"A No, not that I know of.

"Q Was there any discussion that you or the patrolman had of which you are aware with the other unlicensed crew members before they signed off the articles?

"A Was there any discussion?

"Q Or that the patrolman had that you know of or that you had with the other unlicensed crew members.

"A No.

"Q Well, did you inform each and every one of the other crew members before they signed off that they were signing off

under protest?

"A Yes.

"Q You told them this as they came in?

"A Yes.

"Q You told them this?

"A Yes.

"Q Personally?

"A Yes.

"Q Were you the only one that told them or did the other delegates tell them?

"A The other delegates told them too.

"Q Did you tell them?

"A Yes."

Turning now to page 58, line 19. This is examination by myself, your Honor.

"Q When the master told you that they were going to divert the vessel, did he ask your permission to divert the vessel?

"A No.

"Q Did you ever tell the master or anyone that you would refuse to accept the 30 days, an extra 30 days' pay after the diversion of the vessel, that you would refuse to accept it, did you ever tell anyone you wouldn't take it?

"A No.

"Q Did you ever give up any right to those 30 days?

"A No.

"Q When you signed off the shipping articles, did the Shipping Commissioner tell you that by signing off you were giving up any rights to the 30 days' pay?

"A No, he did not tell me that.

"Q Did the Shipping Commissioner at the time of signing off read anything to you about giving up any rights?

"A No.

"Q Did anybody at the time of sign-off read anything to you about giving up any rights?

"A No.

"Q Did you ever intend to give up any rights when you signed off?

"A Certainly not.

"Q When you signed off did you intend to sign off for the wages that you earned on the voyage and nothing else?

"A That's what we -- that's all we intended to do.

"Q So far as you know, did any of the crew members, including the other members of the committee, ever come up to you and say that they were willing to give up their right to that 30 days' wages?

"A No.

"Q So far as you know, was there any other crew member

at the sign-off told that they were giving up their rights to the 30-day wages?

"A No.

"Q Were you present during the sign-off?

"A Yes.

"Q Were you present when each and every unlicensed crew member signed off?

"A Yes.

"Q Did the Shipping Commissioner read any statement from the shipping articles to any of the other crew members?

"A He didn't read anything.

"Q Did he tell any of those crew members that they were giving up any rights at the time of the sign-off?

"A No.

"Q Did any of the unlicensed crew members tell the Shipping Commissioner or anybody else there in the master's office that they were willing to give up any rights that they may have had for those 30 days' wages?

"A No one stated it.

"Q Did anyone in your presence say that in exchange for remaining aboard the vessel and continuing on the payroll they were giving up the right for 30 days' wages?

"A No."

Page 65, line 9, still examination by myself.

"Q Did the Shipping Commissioner at the time of the sign-off ask you or any other unlicensed member of the crew to read any portion of the shipping articles before signing off?

"A No. The only thing that the Commissioner read to us, he doesn't read anything.

"Q I am talking about the sign-off, at this particular sign-off. Did the Shipping Commissioner ask you or any other crew member to read before you signed off any portion of the articles?

"A No."

That is all I have to offer on this deposition.

MR. MC MAHON: Your Honor, may I read this particular witness' deposition?

THE COURT: Yes.

MR. MC MAHON: Beginning on page 4, your Honor, of my examination of this witness, line 17.

"Q What is your age?

"A Sixty-four.

"Q Can you tell me the extent of your education?

"A Sixth grade.

"Q Can you read and write English?

"A Oh, yes."

Page 5, line 12.

"Q Were you a member of Group 1 or Group 2 at that time?

"A Group 1.

"Q Is that the higher seniority rating in terms of job opportunities?

"A Yes, that's right.

"Q You are today a member of Group 1?

"A Yes."

Page 6, line 10.

"Q Were there two other delegates?

"A Two others, one for the deck department, one for the engine room.

"Q Who was the deck department delegate?

"A The deck department delegate, I forget his name.

"Q Does Murray refresh your recollection, Robert Murray?

"A No, he wasn't deck delegate.

"Q Albert Ryan?

"A Yes, engine room.

"Q Albert Ryan was the --

"A Engine department.

"Q Was Murray the deck department delegate?

"A Yes."

Page 8, line 13.

"Q Did you retain copies of those letters?

"A The captain got a copy of the minutes of the meeting.

"Q Did you retain copies of the letter you mailed to the port agent? Everglades?

"A No.

"Q Or in New Orleans?

"A You could get a record of it in New Orleans, yes. They should have copies of the letters on the ship, in the ship's records on the Illinois.

"Q Can you tell me now what the nature of those letters was?

"A Well, we just informed the two agents, one in Miami and the other in New Orleans, we informed them in that manner that the articles as far as we were concerned had been broken by the company.

"Q Did you request anything in those letters?

"A We requested a patrolman on arrival in Taft.

"Q In what manner did you complain that those articles, so far as you were concerned, were broken?"

MR. PHILLIPS: I withdraw my objection.

(Mr. McMahon continues reading.)

"A Well, for the simple reason that I have been in that racket a good many years, and I have signed a lot of articles in my life, and the Commissioner says the articles

wasn't broken.

"Q No, you mentioned to me that you sent letters stating that the articles were broken. Based upon what?

"A That was our opinion about it."

Page 10, line 6.

"Q Were those the only facts upon which you based your conclusion that the articles were broken?

"A Yes.

"Q Who signed those letters?"

Line 20 of page 10, your Honor.

"Q Who signed those letters?

"A The ship's committee."

MR. PHILLIPS: That's been read in.

MR. MC MAHON: I don't have that one. It was skipped from 18 to 24.

MR. PHILLIPS: No. That was read in. Right through to page 11, line 3.

MR. MC MAHON: Page 12, line 6.

"Q Did you retain a copy of those minutes?

"A They were on the ship, in the ship's records. When I leave a ship, I am not going to carry the ship's records with me. That stays on the ship."

MR. PHILLIPS: Why don't you read my comment to clarify it for the Court.

MR. MC MAHON: They are not --

THE COURT: Where are you reading?

MR. MC MAHON: Page 12, the question and answer, line 13.

"Q Those are not records that belong to the company?

"A That's right, they are union records.

"Q Between the time you left Trinidad and the time you arrived --"

Page 13, line 8.

"Q Between the time you left Trinidad and the time you arrived at Taft, did you have any meetings or discussions about the articles or the breaching of the articles?"

MR. PHILLIPS: If I may make a correction, the question should read "any more meetings."

(Mr. McMahon continues reading.)

"Q -- any more meetings or discussions about the articles or the breaching of the articles?

"A That's when we had our meeting, after we left Trinidad.

"Q You mentioned before minutes of a meeting.

"A Yes.

"Q This meeting occurred after you left Trinidad?

"A That's right.

"Q How many days before you got to Trinidad did you

find out the ship was going to be diverted?

"A How many days before we found out?

"Q Before you got to Trinidad, how many days before you docked in Trinidad, between the time you found out the ship was going to be diverted and the time the ship docked in Trinidad.

"A We knew the next morning the ship was diverted.

"Q The next morning, from when, in relation to what?

"A The next morning after we left Port Everglades.

"Q Which is what? January 7th or January 8th?

"A January 7th.

"Q How did you know that?

"A The captain informed us.

"Q When did you get to Trinidad?

"A Four days later.

"Q When the captain advised you that the ship was going to be diverted, did he advise you how he learned it was going to be diverted?

"A He received a cablegram from the company, I presume. He didn't tell us his business.

"Q You don't know?

"A No, but I presume he received a cable from the company."

Page 14, line 22.

"Q Except for the delegates' meeting, you had no meeting with the crew before you left Trinidad?

"A Not before we left Trinidad.

"Q Did you have only one meeting with the delegates up to the time you got to Trinidad?

"A That's right. With the delegates, when we decided that we were going to write to the port agents.

"Q How many days after you were out of Trinidad did you hold this meeting?

"A I would say about the day before we got in. About four days later, after we left Trinidad."

Page 15, line 21.

"Q How were those meetings called?

"A How were they what?

"Q How were those meetings called?

"A The ship's chairman called the meetings.

"Q How do all the crew members find out that a meeting is to be called?

"A Posted on a blackboard.

"Q Where is the blackboa d?

"A In the mess room, back aft.

"Q The crew mess room?

"A Yes.

"Q Are there any instructions or pamphlets or manuals

published by the union with regard to the holding of those meetings?

"A Yes, certainly.

"Q How many publications are there?

"A I imagine just about every man on the ship has a copy of the agreement.

"Q It is an agreement?

"A And the shipping rules.

"Q In addition to the agreement, is there a set of shipping rules?

"A Yes.

"Q Who publishes them?

"A The NMU."

Your Honor, I presume I can stipulate with counsel that wherever the letters NMU are mentioned it means National Maritime Union.

MR. PHILLIPS: So stipulated.

(Mr. McMahon continues reading.)

"Q When you were writing in the letter or letters, did you actually prepare the letters yourself or did one of the other delegates prepare them?

"A All three of us was present when we were writing the letters.

"Q Who did the actual writing?

"A Ryan, I believe it was.

"Q In preparing the letters did you refer to any other documents or other materials?

"A Only the articles.

"Q Only the articles?

"A Yes.

"Q Did you see or were you in a position to see any manual or book which would tell you when articles were broken?

"A No.

"Q Are you aware if the NMU has any publication, manual or book which would tell you the circumstances under which the articles are breached?

"A Publication, yes."

Page 18, line 4.

"Q When the meeting was called, who directed the meeting?

"A I have forgotten who was the ship's chairman.

"Q You told me you were --

"A Chairman of the meeting.

"Q You were ship's chairman --

"A I was ship's chairman but I can't recall who was chairman of the meeting.

"Q Did you play a role in the meeting?

"A I recall the meeting to -- I called the meeting to

order, and the meeting chairman is elected by the membership.

"Q Is there a different meeting chairman elected for every meeting?

"A A lot of times the same man doesn't act as meeting chairman, every meeting.

"Q How would you determine for this particular meeting who was to be elected meeting chairman?"

There is no answer to that question, your Honor.

Page 20, line 6.

"Q But you were present throughout the meeting?

"A Yes.

"Q Do you recall what was discussed at the meeting?

"A What?

"Q Do you recall what was discussed at the meeting?

"A I wouldn't even attempt to state what was said at the meeting. I don't see where that is --"

Then counsel an interjection, "You don't recall.

"Q How long did the meeting last?

"A About 30 minutes.

"Q Were there any subjects discussed at the meeting?

"A Not too many.

"Q Was the meeting called for any one purpose or many purposes?

"A We have a meeting on offshore trips, one going and

one coming, all the time.

"Q Was this a scheduled meeting, in any event?

"A It was.

"Q This meeting was going to be held whether there was a diversion or not?

"A Regardless of anything, yes.

"Q Was one of the discussions at the meeting this diversion?

"A That's right. That was the main issue.

"Q Would you call this diversion or the discussion of that discussion, of a beef, would it be proper to say that?

"A As far as I am concerned, it is a beef.

"Q Would you define what you mean by a beef.

"A Well, a beef is this. The way we refer to it anyway. Say, for instance, now I go out there on the deck and I work an hour's overtime and they dispute it. That's what we call a beef. And in this particular case here, we are beefing about breaking -- about a breaking of the articles.

"Q A beef is a complaint?

"A That's right.

"Q Can you tell me the procedure at the meeting discussing this beef on the diversion?"

Then there is a series of objections.

MR. PHILLIPS: Do you still want that in the record?

MR. MC MAHON: I will withdraw that. Page 25 -- withdrawn. Page 24, line 25.

"Q All the people at the meeting asked questions; is that correct?

"A When the letter was read to them, each member had a right, if he wanted to, to get up and say what he thought about it.

"Q Did certain crew members or did all the crew members get up and say something about it?

"A Not all of them.

"Q Some didn't?

"A When the vote was taken, it was 100 percent.

"Q We will get to the vote. The vote was taken after they got up and discussed the letters?

"A Yes.

"Q Certain crew members got up and had something to ask or something to say about the beef?

"A They didn't ask about it. They just stated their opinion.

"Q Do you recall how many opinions were given?

"A No, I don't.

"Q Were those opinions written down?

"A No.

"Q There were no notations made of those opinions?

"A No."

Page 27, line 12.

"Q There are minutes of those meetings taken?

"A Yes.

"Q Is that taken by the recording secretary?

"A Yes.

"Q Who does the typing of the minutes?

"A Mostly the steward.

"Q The steward?

"A That's on most ships.

"Q Are copies of those minutes forwarded to the company in addition to being kept in the union file?

"A The only copy of the minutes, the only man that is entitled to a copy of the minutes, is the captain of the ship, and he is the agent for the company. So you could say that it is given to the company on record because the captain is agent of the ship.

"Q He is given a copy of the minutes?

"A Yes, all the time."

Page 30, line 23.

"Q Did you have any further conversation with the captain before the ship docked in Taft regarding the diversion beef?

"A Before the meeting was over and the minutes had been

typed out, I turned the minutes over to the captain."

MR. PHILLIPS: May we have that corrected, your Honor? Please reread it. You said before --

MR. MC MAHON: I withdraw what I just read.

THE COURT: What page are we on?

MR. MC MAHON: Page 31, your Honor, the answer at the top of the page, line 2.

"A After the meeting was over and the minutes had been typed out, I turned the minutes over to the captain."

Page 32, line 8.

"Q This vessel arrived at Taft on what date, do you recall? Would January 21st be a correct date of arrival at Taft?

"Mr. Phillips," counsel for the plaintiff, "We can so stipulate.

"Q Do you remember what time of day the vessel arrived at Taft?

"A What kind of day?

"Q What time.

"A It was, as well as I remember it, it was late in the afternoon.

"Q When the vessel tied up at the dock, did anyone from the union come aboard?

"A Yes, the patrolman came aboard.

"Q What was his -- what was the patrolman's name?

"A His name?

"Q Yes.

"A Maurice.

"Q That is his last name, Maurice?

"A Yes.

"Q Do you know what union hall of the NMU that patrolman is from?

"A What hall he came out of?

"Q Yes.

"A New Orleans.

"Q The New Orleans hall?

"A Yes.

"Q Did there occur on the same day a sign-off of the articles, on the same day the vessel docked, did you sign off the articles?

"A Yes.

"Q Did the sign-off commence prior to the patrolman coming aboard?

"A No.

"Q Did the patrolman come aboard immediately upon docking?

"A No. The Commissioner was there first. We wouldn't pay off without the patrolman coming there.

"Q How long a time elapsed between the time of the docking and the time the patrolman got there?

"A Oh, I would say an hour and a half, two hours.

"Q In that time did you have any discussion with anyone regarding this beef?

"A No."

Page 34, your Honor, line 3.

"Q Were you asked to sign off before the patrolman got on board?

"A Yes. They sent for us to sign off. We wouldn't do it.

"Q Would you tell me how they asked for you to sign off?

"A They sent the quartermaster back to the crew to tell the crew to come up and sign off and pay off.

"Q Where did you sign off and pay off?"

Then there is an insert, we are now on the Texaco Nebraska, here, indicating.

"Q Which is in the midship house of the tanker?"

MR. PHILLIPS: Why don't you put in my comment?

MR. MC MAHON: Indicating the master's office.

"Q Which is the midship house of the tanker?

"A Yes.

"Q You said the Illinois was the same type ship as the

Nebraska?

"A Yes, the same type.

"Q When the quartermaster came back, did you refuse to go forward or did someone go up to see the captain?

"A The crew wouldn't go forward.

"Q It is the captain, not the Shipping Commissioner, that requested you to sign off?

"A The captain sent him back.

"Q How was the captain advised that you were refusing to sign off, if you know?

"A How was he advised?

"Q Did you go up forward or did the quartermaster go back?

"A Didn't anyone go up to tell him that we wasn't signing off until a patrolman come. He knew that anyway.

"Q How did he know that?

"A Well, he had the minutes of the meeting as to procedures.

"Q When he sent the quartermaster back to request that you come forward to sign off, no one came forward?

"A No.

"Q No one advised the captain that you weren't going to come forward until the patrolman came aboard?

"A Not until the patrolman came."

MR. PHILLIPS: The objection is withdrawn.

(Mr. McMahon continues reading.)

"Q After the quartermaster first came back to ask you to sign off, did you advise the captain in any way that you weren't going to sign off before a patrolman came aboard?

"A No, we didn't go up there at all. No one went up there.

"Q Not one crew member went up?

"A No.

"Q Did you see the Shipping Commissioner before the patrolman came aboard?

"A No.

"Q You didn't have any discussions with the Shipping Commissioner?

"A No.

"Q When the patrolman came aboard, what were his activities, if you know?"

Then there is an objection. Then there is another question put to the witness, line 13, page 36.

"Q Do you know what the patrolman did when he came aboard?

"A Well, the patrolman came back to the crew's quarters to get the ship's committee and came up to midships.

"Q You were one of the ship's committee?

"A Yes.

"Q When you got midships, what occurred?

"A Well, we told him what our beef was, and he read the minutes of the meeting, which he already had anyway, and he informed the captain and the Commissioner that we wouldn't pay off until we settled the beef.

"Q He had a copy of your letter when he came aboard?

"A Yes. He read the letter before that. No, he didn't have it with him. The letter was down in the hall, but he had read the letter.

"Q He told you that he had read the letter?

"A Yes.

"Q Did he tell you when they received the letter?

"A No, he didn't.

"Q Did he tell you if anyone else read the letter?

"A He didn't say anything about that.

"Q He didn't tell you that?

"A No.

"Q Did he have anything to say about the contents of the letter?

"A No, because the minutes of the meeting is contained about this beef, same as the letter anyway.

"Q Did he tell you if he felt you had a valid beef?

"A No. He didn't say that.

"Q He didn't say that?

"A No. He just informed the Commissioner and the captain that we weren't paying off the ship until he consulted Tex George, the agent in New Orleans.

"Q Had anyone at that point signed off the articles, any of the unlicensed crew?

"A No.

"Q Who was the Shipping Commissioner?

"A I don't know who he was. They got it in the vessel back there, I reckon.

"Q Does the name Ball refresh your recollection?

"A It could have been.

"Q Wilbur Ball?

"A It could have been.

"Q You know that he is the Shipping Commissioner or was at that time in New Orleans?

"A He paid off, so presumably he is the Shipping Commissioner.

"Q Was there anything said by the Shipping Commissioner or the captain to either you or the patrolman regarding the beef?"

The question was then further amended at line 8 to read "that you know of."

"A The Shipping Commissioner informed the patrolman

that we didn't have any beef on the articles.

"Q Is that all he said?

"A That's all he said.

"Q Did he say anything else?

"A No.

"Q He didn't talk about the attached rider of the articles, or anything like that?

"A No, there was a rider on the articles.

"Q But that had nothing to do with this, that had to do with the officers, the rider?

"A The rider, you know what a rider is, it is an agreement between the crew and the master.

"Q This rider that you are referring to, did that have anything to do with the unlicensed personnel?

"A It certainly did.

"Q What was the rider?

"A You got that there.

"Q That rider was a description of the voyage; is that right?

"A Yes."

Your Honor might note at that point that the witness is referring to the description contained in Defendant's A in evidence.

"Q You referred to the document I have here which

indicated a rider. You pointed to this document.

"A Yes.

"Q Could you tell us what this document is?"

I withdraw the last question.

MR. PHILLIPS: The last thing you have is page 40, line 8?

MR. MC MAHON: Yes. Page 41 is the next page.

"Q Is it the letter --"

On line 4, page 41.

"Q Is it the letter? Tell me what it is.

"A Yes, this is the letter we wrote. In other words, we quoted the articles here.

"Q This is the letter you wrote?

"A Yes.

"Q This letter is dated January 31, 1971, at Baltimore, Maryland.

"A Yes.

"Q And it is signed by, besides yourself, Mr. Ryan and Mr. Murray?

"A Yes.

"Q Who prepared this document?

"A All the three of us prepared it.

"Q Who typed it?

"A I believe Mr. Ryan did that. I think he done the

writing."

Page 42, line 10.

"Q Do you know this agent? Had you ever met him before?

"A Yes, I had sailed with him.

"Q How long has he sailed?

"A How long has he sailed?

"Q Is he an old-timer?

"A Oh, yes.

"Q How long, if you know, was he the union agent in New Orleans?

"A He has been down there six years.

"Q Before that he sailed?

"A Before that he was in Galveston.

"Q As a union agent?

"A Yes.

"Q How long was he union agent before January 1971?

"A Oh, seven or eight years, at least that.

"Q And he sailed before that?

"A Yes.

"Q Do you know this patrolman Maurice?

"A No, I know him when I see him, that's all.

"Q Was that the first time you had met him, when he came aboard this vessel?

"A Yes.

"Q What is his age, approximately?

"A His age?

"Q Right.

"A Oh, I imagine the late thirties.

"Q You don't know how long he was with the union?

"A No.

"Q Following the discussion with the Shipping Commissioner did the captain have anything to say?

"A The captain didn't have anything to say.

"Q The captain didn't say anything, as a matter of fact?

"A No.

"Q It was at that point that the union patrolman made the telephone call?

"A Yes.

"Q Did he have to leave the ship to make that call?

"A He went to the dock."

Page 45, line 19.

"Q What is the contract enforcement?

"A That's to settle beefs between the company and the union. It is kind of a legal department, but there is no lawyers involved in it."

Page 46.

"Q Have you signed articles before?

"A Yes.

"Q About how many times?

"A I don't know. Maybe 1,000 times. I don't know how many times. I signed at least 1,000 times.

"Q Did you ever sign articles off prior to this occasion under protest?

"A No, I can't remember of ever running into anything like this.

"Q Not like this, necessarily, but if there was a situation where you didn't think they were giving you the right money, that you earned, you would protest?

"A Yes.

"Q Did you ever protest as far as you recollect again, not necessarily referring to a situation like this?

"A Never got shortchanged.

"Q You never had to sign off articles as far as you recall under protest?

"A That's right.

"Q Prior to this occasion?

"A Yes.

"Q Since this occasion, have you signed off articles under protest?

"A No.

"Q When you came back from the telephone booth to the ship, did the patrolman participate in the discussion about signing off under protest?

"A He told the Commissioner.

"Q He was the one that told the Commissioner?

"A Yes.

"Q That is Patrolman Maurice?

"A Yes.

"Q Was the captain present when you told the Commissioner?

"A Yes.

"Q Were you present?

"A I was present, yes.

"Q What did the Commissioner say?

"A He says okay.

"Q He said okay?

"A Yes.

"Q Then thereupon the sign-off commenced?

"A The sign-off paid off.

"Q Do you specifically recall the word protest being used?

"A Yes.

"Q You do?

"A Yes.

"Q Your answer is clearly yes?

"A Yes."

Page 51, line 8.

"Q Did the union patrolman tell them?

"A I don't think he did.

"Q You don't know that?

"A I don't know about that.

"Q After you signed off the articles, did you then leave the ship?

"A No.

"Q You remained on the ship?

"A Yes.

"Q At the same rate of pay?

"A That's right.

"Q In the same capacity?

"A Yes.

"Q Your capacity was messman?

"A Yes.

"Q How long did you continue to sail on that ship?

"A I got off April 22nd.

"Q Of 1971?

"A Yes, 1971.

"Q What was the reason you got off?

"A Got off for vacation.

"Q Then you came back to the ship after vacation?

"A No.

"Q Why didn't you return to the ship?"

MR. PHILLIPS: Your Honor, I press this objection. By now it is totally irrelevant, we are far --

MR. MC MAHON: I will withdraw it from the time he left the ship, your Honor. I think it is relevant up to the time he left the ship.

MR. PHILLIPS: I didn't make any objection up to the time he left the ship.

MR. MC MAHON: Page 54, line 9.

"Q Mr. Boland, referring to this document marked as Defendant's Exhibit A, the concluding paragraph states that 'The Texas Company consulted the office of the Chief Shipping Commissioner at the Port of New Orleans.' It goes on from there.

"A Yes.

"Q What have you to say about that statement in that paragraph of your own knowledge?

"A Well, when the Shipping Commissioner come aboard, before he ever come aboard, he knew we had a beef on the ship. He was bound to have been notified by the company. Otherwise how would he know about it?

"Q How were you aware that he knew there was a beef

on the ship?

"A How else would he know about it?"

MR. PHILLIPS: Will you accept my stipulation?

MR. MC MAHON: I am prepared to read it, your Honor. Counsel for Mr. Boland stated on the record that "I am prepared to stipulate that this was an assumption on the part of the witness and that he has no direct personal knowledge, if you will accept such stipulation," which I am willing to do.

The question continuing, page 55, line 22. The next sentence reads: "The company ruled that there was no violation of the articles."

MR. PHILLIPS: I press my objection on that, that this constitutes a legal conclusion on the part of the company. It could not conceivably be binding on anybody.

THE COURT: Just a minute. Let me see if I can figure out what's happening here. You are reading from Exhibit A?

MR. MC MAHON: It was being read into the record --

MR. PHILLIPS: I will withdraw my objection. It is obviously self-serving. It can go in.

THE COURT: I just would like to understand it, to give me a chance to assimilate what is here.

MR. PHILLIPS: He is reading from a portion of a

letter written by the seamen through their union representative to the union, which, among other things, indicated that the "Company ruled that there was no violation of the articles."

Obviously if they had not expressed such an opinion, we wouldn't be here, so I think I can withdraw the objection.

THE COURT: All right. Proceed.

MR. MC MAHON: Your Honor, I mark a copy of that letter for identification and I would offer it.

MR. PHILLIPS: Here is the one used at the deposition, Defendant's A, that you are talking about, the original document signed by the crew.

MR. MC MAHON: The letter referred to, your Honor, I ask that it be marked for identification.

THE COURT: Defendant's B.

xxx (Defendant's Exhibit B marked for identification.)

MR. MC MAHON: I offer it in evidence.

THE COURT: That is a letter --

MR. MC MAHON: A letter by the plaintiff who was testifying together with two fellow union employees to their union, National Maritime Union headquarters, here in New York City. It is dated January 30, 1971.

MR. PHILLIPS: January 31.

MR. MC MAHON: 1971. I would offer that letter for all except the third from the bottom paragraph, your Honor, which goes into the Texaco Georgia affair, which my position is that it is irrelevant and immaterial on this trial. I would offer the rest of the letter into evidence.

MR. PHILLIPS: Your Honor, I have no objection to the receipt of the letter. I do object to any exclusion.

On the question of the Texaco Georgia, the evidence will show that confronted with an identical situation several years prior to this, the company, in that case requesting the advice apparently of a different Shipping Commissioner, promptly paid the beef, promptly paid within 30 days pursuant to the statute.

The law is clear, and I have the authorities which I will cite in my brief, that where the company has knowledge of the state of facts and the law applicable to those facts, and they act in disregard of their knowledge of the existing law, then that action could constitute the type of arbitrary, willful and unreasonable conduct such as would warrant the imposition of the penalty of two days' wages for each day that payment is delayed, as provided for by 46 U.S.C. 596.

I have the citation. In fact, I have the entire case with me.

THE COURT: You mean 594?

MR. PHILLIPS: 596. It is Section 596 which contains the provision for payment of two days' wages for each day that payment is delayed.

The authority that I cite to the Court is Venidas versus United Greek Shipowners Corporation, 168 Federal 2nd 681, decided by the Second Circuit in 1948.

In that particular case there had been deductions made by the shipowner pursuant to an alleged collective bargaining agreement which had been challenged by its crew members and litigated adversely to the steamship company, and, nevertheless, subsequent to that litigation they once again continued to deduct the monies, they were foreign seamen, and the Court there held: "As defendant's officials knew of these decisions, defendant, if it was to avoid liability under 46 U.S.C.A 596 and 597, had a heavy burden to show that the refusal to pay had sufficient cause."

The Court concluded that in this particular case they had failed to meet that burden. I submit that any evidence of prior conduct with respect to the application of 594 by this company is relevant on that issue.

MR. MC MAHON: I certainly don't believe it is, your Honor. I think the evidence will show that by far, as I have just been reading, these union -- this union is a very powerful union, had far more knowledge of this situation

aboard the ship and this section than the company did.

THE COURT: What paragraph are we discussing in this letter?

MR. MC MAHON: Third from the bottom, your Honor.

THE COURT: Can I just read the paragraph, please?

(Pause.)

THE COURT: You want to submit this Defendant's B with that third from the last paragraph -- third paragraph from the bottom omitted?

MR. MC MAHON: Excluded, your Honor.

THE COURT: You say it goes to whether they ought to be required now to pay a penalty?

MR. PHILLIPS: Yes, your Honor.

THE COURT: Overruled.

xxx (Defendant's Exhibit B for identification received in evidence.)

THE COURT: The objection to the admission of that paragraph is overruled.

MR. PHILLIPS: I had no objection to the offer.

MR. MC MAHON: May I just note for the record that it is the position of Texaco here that if the claimed provisions of 594 are paid, they in itself are the penalty, are a penalty, without anything more.

THE COURT: Let's not argue it now.

(Record read.)

THE COURT: The objection has been withdrawn and the letter in its entirety has been admitted.

MR. MC MAHON: Page 56, line 15.

"Q The letter says, "The company ruled that there was no violation of the articles." What did you mean by that statement, when this letter was sent?

"A Well, I mean, my opinion, what I mean is, the way I see it, my opinion is that the company just tried to get out of paying this money, the 30 days' pay.

"Q When you used the word ruled --

"A They are the ones that ruled it out.

"Q When did they rule it out?

"A The Commissioner ruled it out. The union ruled it out. That's why we turned it over to this gentleman here. (Indicating his counsel.)

"Q In addition to the company, meaning Texaco, you also said the union ruled it out and the Shipping Commissioner ruled it out; is that correct?

"A Yes.

"Q When and how? What were the circumstances under which you say here that the company ruled it out? Do you follow me?

"A What are the circumstances?

"Q What did you mean by the company ruled it out? When and where did they do it?

"A Well, they didn't pay us, so they must have ruled it out.

"Q In other words, your only conclusion that the company ruled it out was on the basis that they didn't pay you money?

"A That's right. I can't see any other reason.

"Q Nothing was said to you?

"A No."

Top of page 58, examination by Mr. Phillips, your Honor, beginning at line 6.

"Q So far as you know, is Tex George an attorney?

"A Is he an attorney?

"Q Yes.

"A No.

"Q Was the captain of the Texaco Illinois an attorney?

"A No."

Page 61, your Honor, returning to my examination, line 9.

"Q Was this a standard set of articles? Would you know what a standard set of shipping articles is?

"A Well, there are intercoastal articles.

"Q Had you signed this type of articles before?

"A I have signed many of them.

"Q About how many?

"A About 500, I reckon.

"Q Intercoastal?

"A Yes.

"Q There are foreign articles for foreign ports?

"A Some of them could be. It all depends on the rider that is put on the articles.

"Q That rider is a voyage description?

"A Yes.

"Q Whether they are intercoastal or foreign, the basic articles are the same form of articles, aren't they?

"A As far as the articles itself --

"Q Who prepares those articles?

"A The Commissioner.

"Q The Shipping Commissioner?

"A Yes.

"Q That is the United States Government.

"A Yes.

"Q Yes or no?

"A Yes.

"Q Texaco did not type up those articles except for the rider?

"A The rider.

"Q But the riders themselves, that is a Government form?

"A Yes.

"Q Does the Government form contain any kind of release when you sign off those articles?

"A Yes. It states you are signing off the articles at the final port of discharge."

Page 64, line 20.

"Q Do you have any knowledge one way or the other whether the agent George or the patrolman Maurice or anyone from the Maritime Union consulted an attorney prior to the time of the sign-off regarding those letters?

"A No.

"Q Is your answer you don't have any knowledge?

"A I don't think they would.

"Q You don't know?

"A I don't know.

"Q One way or the other?

"A No."

Page 65, continuing on line 21, which is still my examination, your Honor.

"Q How long have you been going to sea, Mr. Boland?

"A Forty years.

"Q How long for the National Maritime Union? How long

have you been sailing as a member of the NMU?

"A Thirty-three years."

Your Honor, that's all I have.

MR. PHILLIPS: At page 31, line 7, your Honor.

"Q When you gave the minutes to him, did you have any discussion with the captain?

"A Well, no, I didn't have no discussion with him. I only just said that's the feelings of the crew.

"Q What did the captain say, if anything?

"A The captain didn't have much to say about it.

"Q Did he say anything?

"A He said he didn't think we would get it.

"Q Did he tell you why?

"A No."

That's all I have of this witness. The next witness is Verner Claybourn.

MR. MC MAHON: Your Honor has the original of that transcript.

THE COURT: Yes.

MR. PHILLIPS: Starting at page 3, line 1. Verner Claybourn, 3601 Memorial Boulevard, Port Arthur, Texas, after having first -- been first duly sworn by the above named attorney at law, was examined and testified as follows. By Mr. McMahon.

"Q Would you state your full name, please, sir.

"A Verner Claybourn.

"Q And your present address?

"A 3601 Memorial Boulevard, Port Arthur, Texas.

"Q By whom are you presently employed?

"A Texaco.

"Q In January 1971 by whom were you employed?

"A Texaco, Inc.

"Q In what capacity were you employed with Texaco?

"A Master.

"Q That's another word for captain?

"A Captain, that's correct.

"Q In January 1971 of what vessel were you master of?

"A The Texaco Illinois."

Turning now to page 8, line 23.

"Q Now, do you remember a patrolman that was on the vessel on January 21, 1971 during the pay-off?

"A Yes, there was a patrolman present.

"Q Do you know Thomas Mauricio?

"A I recall him, yes. I know who you are speaking of.

"Q Was he the patrolman that was aboard the vessel on that day?

"A Yes.

"Q Do you recall that there was a delay in the pay-off

because Mr. Mauricio had to go out on the dock to make a phone call?

"A Yes, I recall that.

"Q Did you have a conversation with Mr. Mauricio before he went out on the dock to make that phone call?

"A Yes, we conversed.

"Q Do you remember at that time Mr. Mauricio raised with you the question of whether or not these crew members were entitled to an extra 30 days' wages by reason of the breach of articles?

"A Are you asking me if I remember him raising that question?

"Q Yes.

"A I don't recall him raising that question to me.

"Q Was that question raised at any time by anybody prior to that pay-off, before the pay-off started?

"A Not that I recall.

"Q All right. Isn't it true that prior to the time that Mr. Mauricio went out on the dock to make the phone call, that there were no grievances with respect to any working conditions or any overtime or any discharges aboard the vessel? Isn't that correct?

"A There were no grievances? Would you state that again, please?"

It was read back.

"Q There were no grievances?

"A That's right.

"Q And when the term -- and when you use the term no grievances, you mean that there were no disputes between the company and any of its unlicensed crew members arising out of the collective bargaining agreement between Texaco and the National Maritime Union; isn't that correct?

"A There were no grievances that I was aware of.

"Q And then there came a time after a discussion with you that Mr. Mauricio went out on the dock and made a phone call, and the pay-off was delayed until his return; isn't that correct?

"A The pay-off was delayed until he returned, that's correct.

"Q And when he returned, did you have any conversation with him, any further conversation?

"A The only conversation basically was that he said NMU agreed that we would go ahead with the pay-off.

"Q That is after he came back from the phone call, right?

"A That's correct."

Turning now to page 12, line 6.

"Q Tell me, if you can recall, what did you and

Mauricio discuss before he went out on the dock to make the phone call?

"A I really and truly -- I can't give you the substance of the conversation other than he representing the people on board the ship, the crew, that he was going to take it up with his office, the pay-off procedure I think would be the word.

"Q In other words, there was some problem which was unresolved which related to the pay-off; is that correct?

"A As I understand it, that would be a problem, yes.

"Q But you don't have any specific recollection of whether it was 30-day wages or some other problem?

"A To be honest, sir, I don't think the problem was presented to me as 30 days extra pay. That was not the problem that I recall.

"Q Would you tell us, to your best recollection, exactly how the problem was presented to you?

"A You mean at the time of this pay-off or previous to that?

"Q Just before the pay-off, before Mr. Mauricio went on the dock and your conversation with him.

"A I didn't anticipate a problem based on the conversation I had with the ship's delegates. This is all the delegates who came to me the day before we got in and asked about the pay-off. I told them I would pay off day for day and when

we arrived I would make my payroll under those conditions and I would pay off on arrival, and other than that, I don't think there was any indication to me at that time that there would --

"Q But you knew that there was a problem; isn't that correct?

"A No, I didn't really know there was a problem.

"Q When you say they came to discuss with you the questions of pay-off and you told them that you would pay them day for day, you were not telling them anything that was new? In other words, you always paid off day for day; isn't that correct?

"A Yes, the articles I think would stipulate a day-to-day basis.

"Q You weren't telling them anything that they did not already know with respect to the pay-off; isn't that correct?

"A Well, no."

Turning now to page 15, line 9, by myself.

"Q Was it your impression that Mr. Mauricio was asking that you pay the crew more money than the pay-off you had prepared called for?

"A If my memory serves me right, he did not. Mr. Mauricio did not specifically state to me what he was going to do or not do.

"Q Well, you knew that there was something amiss, that this wasn't the smoothest pay-off that you ever had?

"A That's true.

"Q What we are trying to find out is, since there were no disputes arising out of the working conditions on the contract, but that there was some kind of dispute, we are trying to find out if you can remember what it was. If you don't, of course, as I said, we are bound by that.

"The Witness: I did have a meeting with the delegates aboard the ship. I did talk about the pay-off. They did talk about the articles, whether or not they could be terminated at Taft, Louisiana.

"I told the delegates that my payroll procedure would be day for day, that as I understood the law, so long as they stayed on board the ship, were not forced off, that they would in fact receive 30 days' pay, which, of course, as I understand it, is required under the law.

"Q And by this you are talking about the statute which provides that when articles are broken, within less than a month they are entitled to an extra 30 days' pay, is that the statute, the law you are referring to?

"A I think that would be the one."

Dropping now to line 15.

"Q Captain, you are not a lawyer, I take it?

"A No, indeed not.

"Q And you don't pretend to have a lawyer's knowledge of the statute which we have referred to, 46 U.S.C. 594?

"A I do not.

"Q So would you be good enough to explain to us what you meant at the time that you used the term 30 days' pay at the meeting with the ship's delegates?

"A As I understood it, once the articles are signed and then broken, arbitrarily broken, that the people who signed the articles are entitled to 30 days' pay. Now, that's the way I understood it. If the 30 days extra pay is in there, I am not aware of that.

"Q Now, when Mauricio had this discussion with you, it was on this subject of the 30 days' pay, was it not?

"A It was a subject of 30 days' pay."

Dropping now to line 19.

"Q Did you tell each individual crew member that by signing off the vessel he was giving up any rights he might have under 46 U.S.C. 594?

"A I would think that my answer to these people about the pay-off procedure would imply that.

"Q But you did not say that to each individual? You did not have a separate conversation with each individual crewman and tell them that they were giving up their rights

to 30 days extra pay under this law, did you?

"A No, I didn't.

"Q And isn't it also true that none of the crew members individually indicated to you that they were agreeable to giving up any rights they may have to 30 days extra pay under federal law?

"A I would say that none of them protested to me about the pay-off procedure.

"Q Well, that's not exactly answering my question. Isn't it true that not one of the individual crew members told you in a personal direct conversation he was agreeable to giving up 30 days extra pay?

"A That's hardly a fair question.

"Q Well, either such conversation took place or it did not.

"A No, a conversation such as that did not take place."

That's all I have. This being the master's deposition, this is deemed to be the deposition of an adverse party. The master is by law the managing agent of the company, whose statements bind the company.

MR. MC MAHON: Page 3, Captain Claybourn's deposition, line 23.

"Q And was the Texaco Illinois involved in a dispute at that time regarding shipping articles?

"A Yes, that would be correct.

"Q Now, the articles that are in dispute, Captain, out of what port were they issued?

"A We issued those articles at the Port of Everglades, Florida."

THE COURT: We signed those articles?

MR. MC MAHON: We signed those articles, I am sorry, your Honor, at the Port of Everglades.

"Q And did there come a time when the Texaco Illinois was diverted from the voyage as described in the shipping articles?

"A Yes, that's correct.

"Q And at the time that it took place, did you have any discussion with the crew regarding that diversion?

"A Not a formal discussion, no. I did make it known that we were being diverted.

"Q What did the crew or let's say the union delegates of the crew, that's who you would normally deal with?

"(The witness nods his head affirmatively.)

"Q What in turn did you say, did they say to you, if anything?

"A Nothing of consequence concerning this diversion at that time. They didn't say a thing about it.

"Q Did there come a time when they said something to

you about this diversion?

"A They spoke to me later on in the voyage. The three delegates come up later on, yes.

"Q And what was the substance of the discussion occurring at that time?

"A Oh, basically they had asked me about the articles, how they read. I told them that we had been diverted, that pay-off would be in Taft, Louisiana, and we arrived at that port and terminated the articles.

"Q Did any discussion arise as to any additional 30 days' pay?

"A No, not to my knowledge.

"Q Did at any time before the signing off discussion arise between you and the delegates regarding any additional 30 days' pay --"

I will reread that question, your Honor.

"Q Did at any time before the sign-off discussion arise between you and the delegates regarding any additional 30 days' pay?

"A There was no discussions at all concerning that between myself and the crew."

MR. PHILLIPS: The captain's grammar was better than yours.

MR. MC MAHON: There is something obviously missing

from the question.

MR. PHILLIPS: He said "were," not "was."

(Mr. McMahon continues reading.)

"Q The delegates, do you recall their names?

"A Joe Bolin, B-o-l-i-n. The other one was Robert Murray. The third delegate I think would be Robert Ryan."

Can we stipulate, counsel, that the Bolin in there is the same Boland as testified earlier, B-o-l-a-n-d?

MR. PHILLIPS: So stipulated.

"Q The ship was, as I understand your testimony, to terminate articles at Taft, Louisiana.

"A That's correct.

"Q At the time of the termination of the articles, was any protest made to you by any member of the crew or representative of the crew regarding the termination of these articles?

"A No protest was presented to me.

"Q Are you aware of any protest, to your knowledge, being made to any Shipping Commissioner who might have been present aboard the vessel regarding a termination of these articles?

"A No, not that I know of."

This is a continuing examination by Mr. Phillips representing the plaintiffs on page 6, line 18.

"Q Captain, did you receive a copy of the minutes of the crew members' meeting that took place on board that vessel prior to the termination of articles on January 21, 1971?

"A I can't deny that I received them, however, I really don't remember seeing those minutes.

"Q As a matter of fact, it was customary for the crew members to give you a copy of the minutes of meetings; isn't that correct?

"A This is true, yes."

Question on page 7, line 17.

"Q Did you ever read those minutes? Do you have any recollection of reading them?

"A I would like to clarify just one thing. If the minutes that were presented at the end of January are the minutes you are referring to, I would not have had them myself.

"Q My question is were you presented with the minutes of the meeting which took place before January 21, 1971? That was my question.

"A I honestly do not remember receiving them.

"Q I see. In other words, you are telling us that you might have received them or you might not have received them?

"A I would say that's correct.

"Q And it is also correct that you might have read

them or you might not have read them; is that correct?

"A If I received them, I would have read them."

Page 17, line 5, your Honor. This is a continuation of the questioning by Mr. Phillips.

MR. PHILLIPS: Do you think it would make more sense to reread the earlier question and answer? I would have no objection, if the Court doesn't.

THE COURT: Okay.

MR. MC MAHON: Page 16, line 23.

"Q And by this you are talking about the statute which provides that when articles are broken within less than a month they are entitled to an extra 30 days' pay, is that the statute, the law you are referring to?

"A I think that would be the one.

"Q I see. Go ahead and proceed, if you haven't finished your answer.

"A I think that's my answer. I did in fact tell these people how we would terminate the articles.

"Q I see. And then subsequently after the vessel arrived in port, you subsequently learned that they were not entitled to 30 days' pay; is that correct?

"A No, that's not correct."

Page 20, your Honor, line 4. This is back to the examination by me.

"Q When did had that conversation with Patrolman Mauricio, you were referring to 30 days' pay, not 30 days extra pay?

"A That's what I mean to convey, that we were talking of a 30-day pay period.

"Q No protest was made to you by Patrolman Mauricio or anyone else with respect to the 30 days extra pay?

"A No."

Continuing examination by Mr. Phillips.

"Q As a matter of fact, on January 21st, the crew members did not receive 30 days' pay; isn't that correct?

"A That would be correct.

"Q They received pay from January 6th to the 21st, inclusive; isn't that correct?

"A I believe that's when the payroll terminated, that's correct.

"Q Is it not true that some crew members remained --"

We are back to examination by me, your Honor, question on line 25 of page 20.

"Q Is it not true that some crew members remained in the employ of Texaco continuing thereafter?

"A Those who remained in the employ of Texaco did in fact receive 30 days' pay or whatever.

"Q And as a matter of fact, no crew member except the

ones who may have been bumped as relief crew members lost any day's pay?

"A Anyone who stayed aboard the vessel did not lose not one day's pay.

"Q And to your knowledge, did Texaco discharge anyone on January 21, 1971?

"A Not to my knowledge."

Continuing the examination by Mr. Phillips.

"Q When you testified that those who remained aboard received 30 days' pay, exactly what did that mean?

"A Well, it means that they -- I'm not sure how I am going to phrase this.

"Q Let me try to make it easier for you. Doesn't that mean that if they stayed on the vessel an additional 30 days and worked an additional 30 days, they received an additional 30 days' pay?

"A If a man stayed on board the vessel and worked 30 days, he would receive 30 days' pay, not an additional 30 days' pay in addition to the work performed.

"Q In other words, nobody got one extra day wage for a day that they did not work at that time?

"A That's my understanding."

That's all I have on this deposition.

MR. PHILLIPS: I have nothing further.

THE COURT: We will recess now until two o'clock for lunch. Do you have any more witnesses other than the remaining depositions in my hand?

MR. PHILLIPS: No, your Honor. I have two more depositions -- I am sorry, three more.

THE COURT: I only have two here.

MR. PHILLIPS: I will offer the original of Mr. McCarthy, which I now tender to the Court.

(Luncheon recess.)

AFTERNOON SESSION

2:10 p.m.

(In open court.)

MR. PHILLIPS: Your Honor, I am now reading from the testimony of Wilbur F. Ball. Wilbur F. Ball, 261 Cottonwood Drive, Gretna, Louisiana, after having been first duly sworn by the above named attorney at law, was examined and testified as follows. Examination by Mr. McMahon.

"Q Would you state your full name, sir.

"A Wilbur F. Ball.

"Q By whom are you presently employed?

"A United States Coast Guard.

"Q And in what capacity are you employed?

"A I have a rank of chief warrant officer, and I perform the duties of Deputy Shipping Commissioner.

"Q Would you describe for me, sir, the duties of a Deputy Shipping Commissioner?

"A We witness the signing of shipping articles and the paying off of shipping articles, see that the manning requirements are fulfilled at the time of signing on, that they are properly licensed, and that the proper documents are held by the seamen and to insure that the men are fairly paid and proper deductions made, and also to review the log book for the voyage that they completed."

Turning to line 8.

"Q Sir, you mentioned that you insure that the men are fairly paid. Is there any procedure that you follow in making this assurance?

"A Just the basic wage, that is all that we are concerned with, and the proper deductions, which is just the taxes and allotments."

Turning now to page 6, line 2.

"Q In January 1971 were you Deputy Shipping Commissioner?

"A Yes, sir.

"Q And your duties then were the same as you described earlier in this deposition?

"A Yes, sir.

"Q In January 1971 did you have occasion in the course of your occupation to be aboard the Texaco Illinois?

"A Yes, sir."

Turning now to page 7, line 3.

"Q Do you recall the date approximately in January when you boarded the vessel?

"A The 21st of January.

"Q Where was the vessel?

"A It was in the Mississippi River, I believe it was in Ama, Louisiana."

Skipping to line 14.

"Q Can you tell me the purpose for which you boarded the vessel, that vessel?

"A It was scheduled to have a pay-off.

"Q And was this a pay-off that was known as foreign articles?

"A Yes, sir."

Turning now to page 17.

MR. MC MAHON: Your Honor, I would ask that the entire answer be read in answer to that last question.

THE COURT: All right.

MR. PHILLIPS: If the Court so directs, I will be happy to read it.

THE COURT: All right.

MR. PHILLIPS: Continuing then the last answer in toto.

"A Yes, sir. At the time I was assigned the job of going on the pay-off it was not indicated whether it was foreign articles or not. It could have been intracoastal."

Turning now to page 17, line 16.

"Q You are not an attorney, I take it?

"A No, sir."

Dropping now to line 25.

"Q Can you tell me, are you familiar with all of the

federal statutes relating to seamen?

"A No, sir.

"Q Are you specifically familiar with 46 U.S.C. 594?

"A No, sir."

Dropping down to line 20.

Continuing my examination.

"Q It would be correct then to say that at no time did you inform the crewmen each individually that they were not entitled to any wages over and above that which is set forth in the articles? Is that correct?"

MR. MC MAHON: I withdraw the objection, your Honor, to the form of the question.

MR. PHILLIPS: Answer on page 19, line 12.

"A That is correct.

Continuing at line 16.

"Q Specifically, you did not inform any crewmen that they were not entitled to 30 days' wages over and above that set forth in the shipping articles; isn't that correct?"

Line 24.

"A That's correct."

MR. MC MAHON: I withdraw the objection.

MR. PHILLIPS: Turning now to page 21, line 12.

"Q Is it correct to say that insofar as the amount of the seamen's wages are concerned, your sole concern is to see

that the earned wages, the wages which they earned during the voyage for which you are paying them off, are correctly paid to them and that the deductions and allotments are not in excess of that reflected in the log book; isn't that correct?

"A That's correct. The earned wages, their basic wages, which do not include any overtime.

"Q In other words, you are not even concerned with the overtime?

"A That's correct.

"Q And you are not concerned with any extra compensation outside of those basic wages; isn't that correct?

"A At the time of pay-off, that is correct."

That is all I propose to read from this deposition at this time.

MR. MC MAHON: Page 4, your Honor, line 16. This is questioning by myself.

"Q Is there any procedure that is followed if the men are found to be not fairly paid?

"A At the time of pay-off, if there are any questions, the shipping articles are broken down into gross amounts, total deductions and net pay-off, but the vessel has an itemized wage account, so if anyone has a question about his proper number of allotments or proper deductions, they have the log book available, which advances have to be entered

into the official log book, and we check the log book and the payroll, the vessel payroll, to insure that there is nothing improper.

"Q Well, is there any procedure followed when there is something improper about a man's claim about his pay-off?

"A Well, if it is something that cannot be checked immediately from the vessel, if a man has, for instance, a question about the number of allotments that were set out, the man will sign off above his signature he will put sign-off in protest. And then we ask him to write out his protest in an original and one copy so that we will have a copy of his protest.

"Q Now, in January 1971 did you perform the same duties as you have described here?

"A Yes, sir."

MR. PHILLIPS: The objection is withdrawn.

MR. MC MAHON: Page 7, line 24.

"Q You subsequently found out that it was what kind of articles?

"A After boarding the vessel, it was foreign articles."

Page 8, line 8.

"Q Can you tell me what your activities were after you boarded the vessel?

"A As nearly as I can remember, the vessel was due to

be in at noon, and it came in late in the afternoon. I boarded the vessel immediately upon arrival. They were not prepared immediately for pay-off, so I waited until everything was straightened out, and I signed and stamped the discharges, reviewed the log book and set up the forms for pay-off, and I believe that the pay-off didn't actually commence until about 1830.

"Q And who did you see when you boarded the vessel?

"A The captain.

"Q Did you speak to anyone else besides the captain before the pay-off took place?

"A I cannot recollect.

"Q Did you have any conversation with the captain about this pay-off prior to commencing the pay-off?

"A Not directly concerning the pay-off. I did my work and he was doing his work.

"Q Now can you describe for me the procedure by which the pay-off takes place?

"A Normally when they are ready to commence the pay-off, we go below, either to the officers' mess or the crew's mess. Normally there is a customs aboard and I usually sit at one table, the captain sits at another table close by.

The seamen come in, present their identification card normally called a Z card. That is checked with their

discharge which normally is previously made up by the captain. I check the Z number and the name on the discharge, indicate to the seaman where to sign on the shipping articles. He signs the shipping articles and also signs the discharge.

I give him the original discharge and the seaman's card back to him, and then he goes to the captain, shows the captain that he has got his discharge, and then the captain pays him the wages that are on the shipping articles, the net wages.

"Q Now you described before a method by which, if the seaman was not satisfied with some feature of the pay-off, he would make what you call a protest to you."

MR. PHILLIPS: Your Honor, I object to the form of that question. We have already established that the sole concern of the Shipping Commissioner is with the earned wages, the earned overtime, the allotments and the advances, and he has no concern whatsoever with anything beyond that.

The only issue in this case is precisely that, something beyond that. So any testimony as to the procedure followed in a pay-off concerned with matters not before this Court is irrelevant.

MR. MC MAHON: Your Honor, the testimony here today from these depositions has been legion from the crew members that there were protests made and they were aware that they

should make protests, and they said specifically they made them, particularly Roland and particularly Mauricio, to the Shipping Commissioner.

THE COURT: Overruled.

MR. MC MAHON: Page 11, line 5.

"A Well, normally, if it is something that we can check immediately, I will stop the pay-off and ask the captain for his payroll, and I will check it myself and try and clear it up before the man signs off.

"Q Can there be a protest noted on the articles as to anything other than the earned wages at any time?

"A Yes, sir. He can protest to anything he is not satisfied with, and if it is something I cannot clear up and satisfy him prior to him signing off and he still desires to sign off, then he will indicate by making a protest.

"Q Now on the Texaco Illinois, the copy of the articles is not here, but from your recollection do you recall that there were any protests noted on those articles?

"A No, sir.

"Q Do you recall if anyone made any objection to you at any time during the sign-off about any feature involving this sign-off?

"A No, sir.

"Q Do you recall if at any time during this sign-off

anyone made any objection to you that they were not being paid what they felt they were entitled to be paid at the termination of this voyage?

"A No, sir.

"Q These protests, they are forms of complaint made by the seamen as to the various features of the sign-off; is that correct?

"A Yes, sir."

The articles being referred to, your Honor, are now in evidence, I would like to note on the record, as Defendant's Exhibit A in evidence.

Continuing, page 12, line 23. This is my examination, your Honor, continuing.

"Q Any protest known to you is some form of complaint made by the seamen; is that correct?

"A Yes, sir.

"Q Have you heard the word beefs used to refer to protests?

"A I have heard the word beefs but not in direct relationship with protests.

"Q How long have you been a Deputy Shipping Commissioner?

"A Nearly three and a half years in New Orleans and nearly a year and a half in Miami.

"Q That's before New Orleans?

"A Yes, sir.

"Q Up until January 1971 how many occasions did you have to sign off what we have termed foreign articles?

"A I have no idea.

"Q Can you approximate? 100? 10,000? Can you give me an estimate?

"A I would say 150 to 200.

"Q In those sign-offs, have there been protests noted from time to time?

"A Yes, sir."

This is at the top of page 14, your Honor, line 2.

"Q Can you approximate again in general terms about how many protests that you can remember being involved with on foreign articles prior to January 1971?

"A Very few, if I understood the question.

"Q If you misunderstood it, he will read it back to you.

"A I don't know how many protests were actually made where I have cleared them up to the satisfaction of man prior to him having to make out a written protest.

"Q Well, do I understand you to say that there were many more protests cleared up than actually noted by you; is that what you are saying?

"A Yes, sir.

"Q All right. How many protests overall did you receive, whether they were cleared up or noted in some manner by you prior to January 1971?

"A I would say 15 to 20.

"Q And how many of those were, that you can recall, were officially noted by you?

"A Less than five.

"Q And did you follow standard procedure in noting such protests that couldn't be cleared up?

"A Yes, sir.

"Q Would you tell us what that procedure was?

"A Above the man's name on the shipping articles, it is noted that the seaman signed off under protest. Then the man in his own handwriting dates it, puts the name of the vessel, his signature, of course, on the original and one copy, and writes down what his protest is. Then there is a copy of the protest attached to each copy of the shipping articles.

"Q In other words, the protest form is separate from the shipping articles?

"A Yes, sir.

"Q I believe you have already testified there was no protest noted on the shipping articles as you recall for this Texaco Illinois?

"A Yes, sir.

"Q And I take it, then, there was no separate papers of any form filled out by seamen indicating that protest as a result of the termination of the articles for the Texaco Illinois for this voyage in question?

"A Not with me."

Continuing at page 22, line 10.

"Q Well, as I understood your testimony, though if a seaman had -- Mr. Ball, if a seaman had a protest about any matter and he wished to bring it up, he could make it with you; is that correct?

"A Yes, sir.

"Q And would you be required to note that protest, if it could not be resolved?

"A Yes, sir.

Page 23, line 6. This is again my examination.

"Q Have you ever heard of the term mutual consent mentioned in connection with sing-offs?

"A Yes, sir.

"Q Would you tell us what that term means to you?"

MR. PHILLIPS: Your Honor, I press my objection. In this case there is no question of a mutual consent sign-off which is the type of thing that occurs before the termination of a voyage when an individual crew member leaves the vessel. We don't have that here at all and it is totally irrelevant.

THE COURT: The objection is it calls for a legal conclusion probably on the part of the witness, whether there is a mutual consent by anyone.

MR. MC MAHON: I think it is referring, your Honor, if I may refer the Court to the articles, the mutual consent language is included on the articles and the Shipping Commissioner is administering these articles. This is a Government form.

THE COURT: It says what?

MR. MC MAHON: The mutual consent release is contained and spelled out on the last page of the shipping articles, and I think this is what he is referring to, and, of course, this is one of Texaco's keystones of this lawsuit. I think that he should be entitled to answer that question.

MR. PHILLIPS: Is it your contention that the article says mutual consent, that those words are in there?

MR. MC MAHON: The consent is based obviously on this release form.

MR. PHILLIPS: I am talking about the words mutual consent as legal words of art with respect to shipping practice in the industry.

MR. MC MAHON: Is it a legal word of art? I don't know that. I think the witness -- this is a non-jury trial, he should be allowed to answer it. He is administering these

articles, your Honor.

MR. PHILLIPS: I think it will take less time to put it in than to continue arguing, therefore, I will withdraw my objection.

THE COURT: What are you about to read? From that document, what are you talking about?

MR. MC MAHON: The release form, there is a discharge sheet on the last page of the articles. These are manifold papers. The particulars of the discharge, in the column where the men sign, is the release form. That in effect to us is a mutual consent and it is a release of the company. We are relying on that language.

THE COURT: That's a legal conclusion. That's the issue here, isn't it, whether they consented to the discontinuance of this voyage?

MR. MC MAHON: I think the fact of consent, your Honor --

THE COURT: Isn't that one of the issues that we are trying, consent to terminate the voyage, as Judge McMahon said in his opinion? How many times do we have to go over that? He says that's one of the disputed issues here. You want to ask a witness what is meant by mutual consent?

MR. MC MAHON: To him, what was his state of mind, referring to that mutual consent.

MR. PHILLIPS: This is not a party whose state of mind is at issue. This is the Shipping Commissioner.

MR. MC MAHON: He was the one who was imparting his knowledge to these men.

THE COURT: The objection is sustained. Let me ask you this about Defendant's Exhibit A. Does each seaman have a copy of that document in his possession?

MR. PHILLIPS: No, your Honor.

MR. MC MAHON: They get a discharge form, as I understand the procedure, your Honor. This is a Government document, a Government filed record.

THE COURT: All I asked you was whether every seaman has a copy of that.

MR. MC MAHON: No, your Honor.

THE COURT: How can he be expected to know what is in that document?

MR. MC MAHON: This is not a document prepared by us or Texaco or anybody. This is a Government document. We are coming back to the question, your Honor, with Judge McMahon's opinion, which I don't --

THE COURT: You want the seamen to be bound by everything that's said in there in this case, is that it?

MR. MC MAHON: In the Government release, of course, yes, your Honor.

THE COURT: He is expected to read that before he signs it?

MR. MC MAHON: The Government form?

THE COURT: No, the seaman, does he read that before he signs --

MR. MC MAHON: I have no idea, your Honor. I tried to take the depositions of all the other crew members, and your Honor told me I could not in that conference in your chambers, and I don't know what the evidence --

MR. PHILLIPS: Your Honor, he is misstating what you said.

THE COURT: That is a misstatement of the record.

MR. PHILLIPS: Your Honor directed that he take the three depositions and if at the conclusion of those depositions he felt that he needed further depositions, he was to make another application to you, which was never done.

THE COURT: Yes, I have gone over the record, and I discovered that's what the situation was myself, because you made that statement on the record before, Mr. McMahon, that I prevented you from taking some kind of deposition, and I went over that record last week.

MR. MC MAHON: I had the order all ready to take the deposition from Judge Gurfein pursuant to Magistrate Goettel's report, and your Honor stayed that. I did come back with an

application which your Honor apparently in connection with the constitutional law question that's in this case -- and your honor never gave me a ruling on that.

THE COURT: Never gave you a ruling on what?

MR. MC MAHON: On the part in the brief on the question about my right to take further depositions --

THE COURT: The time that we took the matter up previously is what I am talking about, not at the time you filed this late constitutional law memorandum. I am talking about a long time ago, more than a year ago, we talked about this.

MR. MC MAHON: When I first served my Answer three or four years ago, I immediately served a notice to take the deposition of every one of these crewmen. I didn't get any of them. I made a motion before Judge Gurfein, and he referred it to Magistrate Goettel, and in a somewhat lengthy report set up rules for taking the deposition of these men.

Apparently there was a question of state of mind brought up then, which I dispute. You know my position on this, your Honor, I made it clear under the Jones case. I was prevented from taking those -- I had an order to take them and then I was prevented from continuing to take them. I don't know, your Honor, how many times I would have to come back to Court to take this order.

THE COURT: You were prevented how?

MR. MC MAHON: When we appeared before your Honor, your Honor told me not to proceed further with any of the depositions of the crew members, but take the three, the captain, the union patrolman and the third man, the Shipping Commissioner, in New Orleans, which I did.

MR. PHILLIPS: And the Court specifically said, if you felt that was unsatisfactory, you could make application for further deposition, which was not done.

MR. MC MAHON: I made an application. It was too late, but I had made an application right away in the lawsuit, your Honor, right after I served my notice, and --

THE COURT: The point was at that point this case had been called for some kind of pre-trial conference, hadn't it?

MR. PHILLIPS: That's correct.

THE COURT: Because it had been pending for so long.

MR. PHILLIPS: That's correct, your Honor.

THE COURT: You are telling me that long before that you filed a notice to take depositions, which depositions you had not taken, isn't that so?

MR. MC MAHON: And moved on it and got a report from Magistrate Goettel together with a confirming opinion of Judge Gurfein.

THE COURT: Confirming what?

MR. MC MAHON: The report and recommendations of Magistrate Goettel to continue with the taking of the depositions in the procedures as set out by Magistrate Goettel in that report.

MR. PHILLIPS: I think you ought to produce that report of Magistrate Goettel because it doesn't say quite what you say.

THE COURT: I went over it previously, as I said. I don't think we ought to stop now. All I asked you was whether ever seaman had a copy of the shipping articles.

MR. MC MAHON: I don't know. It is not normally done, your Honor.

MR. PHILLIPS: The answer is no, and the witness who will be testifying will attest to that, that no copies are ever furnished seamen, unless counsel is willing to stipulate to that.

MR. MC MAHON: They are furnished discharges, your Honor.

MR. PHILLIPS: They are furnished discharges --

THE COURT: The record is clear that seamen don't get Exhibit A. So I don't know what the point of reading from that is. Let's proceed.

MR. MC MAHON: Continuing on page 24, line 23.

MR. PHILLIPS: Objection -- I am sorry, your Honor, excuse me.

"Q You testified that any seaman can make any protest to you at any time; is that correct?

"A Yes, sir."

Page 25, line 14.

"Q On the Texaco Illinois, did you see Mr. Mauricio?

"A Yes, sir.

"Q And you know that Mr. Mauricio is one of the legal patrolmen for the local Maritime Union; is that correct?

"A Yes, sir.

"Q And you know he was there representing the unlicensed crewmen of the Texaco Illinois; isn't that correct?

"A Yes, sir.

"Q And you saw him with several of the crew members of the vessel; isn't that true? If you remember.

"A Well, the only time I saw Mr. Mauricio was in the pay-off room, and who he was with and who he was talking to, I believe he was talking to the captain, but I can't answer how many crewmen were there at the time."

Page 26, line 19, by me.

"Q Do you remember whether there was any discussion in your presence of the question as to whether these crew members on the Texaco Illinois are entitled to an extra 30 days'

compensation for any reason whatsoever over and above what was reflected in the articles?

"A No, sir. I heard no --

"Q You don't recall any?

"A No, sir."

That concludes my reading, your Honor.

MR. PHILLIPS: At this time I will read from the deposition of Thomas F. Mauricio, starting at page 3, line 1. Thomas F. Mauricio, 3513 45th Street, Metarie, Louisiana, after having been duly sworn by the above named attorney at law, was examined and testified as follows. By Mr. McMahon.

"Q Would you please state your full name, please, sir.

"A My name is Thomas F. Mauricio.

"Q And your address?

"A 3513 45th Street, Metarie, Louisiana.

"Q How is that spelled, what is the name of that town?

"A M-e-t-a-r-i-e.

"Q Would you tell me by whom you are presently employed.

"A By the National Maritime Union.

"Q In what capacity are you employed?

"A Patrolman.

"Q In January 1971 by whom were you employed?

"A By the National Maritime Union.

"Q Is that in the same capacity as you are now?

"A Yes, sir.

"Q Would you describe to me what the duties of a patrolman are.

"A The duties of the patrolman is to go to the ships and get from the members the grievances that they have and correct the grievances with the company representatives."

Page 7.

"Q In January 1971 were you assigned to participate in termination of articles aboard the Texaco Illinois?

"A Yes, sir."

Page 8, line 7.

"Q Now, the sign-off on this particular vessel took place on January 21, 1971; is that correct, sir?

"A Yes."

Page 10, line 23.

"Q Well, there was a beef on this vessel, was there not, on the Texaco Illinois, Mr. Mauricio?

"A Yes, it was presented to me at the time of pay-off, yes.

"Q Was that beef ultimately referred to --"

I am sorry, I should have stopped at line 2 and continued now on page 13, line 18.

"Q And this conference or discussion that took place with the delegates before the sign-off commenced, can you tell

me the substance of that conversation or discussion?

"A Yes. They presented the overtime beef. That's what we discussed. And then they came down here and asked for the 30 days' pay in addition to their wages for breaking the articles less than 30 days, changing the course of the ship and therefore making the articles to be broken.

"Q And what did you tell them, if anything?

"A I told them that we were going to take it up with the master. He was representing the company at the time."

Turning now to page 15, line 8.

"Q In other words, just so I have the sequence of events right, you spoke to the delegates, the committee, and then you spoke to the captain?

"A Correct.

"Q Did you go alone or did you go --

"A With the delegates.

"Q Okay. Do you remember the name of the captain?

"A No.

"Q Can you tell me the substance of your conversation with the captain?

"A Yes. I told the captain that the articles were being broken and therefore they would have to pay 30 days' pay.

"Q What was the captain's reply to that, sir, if

anything?

"A The captain said that they would not pay.

"Q Is that all he said?

"A He said they were not entitled to it, that they were not going to pay it.

"Q Did he tell you why they were not entitled to it?

"A No.

"Q Did he say anything to you about the men continuing in the employ of Texaco aboard the same vessel?

"A No.

"Q When you spoke to the captain, did you speak to him alone or were these committee delegates with you?

"A Yes, the delegates were with me; in fact some of the crew were also around because this took place in the mess, saloon mess.

"Q And was the Shipping Commissioner or Assistant Shipping Commissioner, was he there?

"A Yes.

"Q Did he participate in the conversation?

"A No.

"Q Did you speak to him in any manner?

"A No."

Turning now to page 17, line 4.

"Q What did you tell him, sir?"

THE COURT: Page 17, line 4?

MR. PHILLIPS: I am confused. Page 17, line 5.

"By Mr. McMahon:

"Q Now we will go back. After you spoke to the captain, is it then that you left the vessel to make a telephone call to Mr. George?

"A Yes.

"Q And when you left the vessel, were you accompanied by anyone?

"A Yes.

"Q Who accompanied you?

"A The committee delegates.

"Q So that I understand you, when the captain said they weren't going to pay it, did you make any reply to him?

"A Not to him.

"Q You said nothing to him?

"A No. When he said that he was not going to pay, there was no reason for me to continue.

"Q Well, did you inform the captain that you were going to make a telephone call?

"A Yes.

"Q Did you tell the captain the purpose of the telephone call?

"A Yes.

"Q What did you tell him, sir?

"A I told him that I was going to contact the agent of the port on the matter.

"Q And you in fact did that?

"A Yes.

"Q And you called Mr. George?

"A Yes.

"Q And will you tell me the substance of the conversation between you and Mr. George.

"A I told Mr. George the problem that I had on the ship on the account of the 30 days' pay on the articles being broken before the 30 days.

"Q And what was his reply?

"A His reply was to bring it into the office, that he would follow through on the beef.

"Q Did you at any time advise the crew members to protest at the time of sign-off?

"A Yes.

"Q Who did you advise to do that?

"A The committee, and I also told the captain that the crew was signing off under protest.

"Q You personally told the captain that the crew would sign under protest?

"A Yes, sir, right in the saloon.

"Q Did you remain on board the vessel throughout the sign-off?

"A Yes.

"Q And did you at any time talk to the Shipping Commissioner during the course of the sign-off?

"A No. I had no reason to. My duty is to take it up with the company representative, not with the Commissioner.

"Q But as I understand it, it was you that told the delegates to protest the sign-off; is that correct?

"A Yes.

"Q And you were advised to do that by the agent, Mr. George?

"A Yes.

"Q And so that it was one of your duties to at least advise the people to make sure they protested the sign-off?

"A Yes.

"Q But then as I understand you, it is not one of your duties to see to it that the protest is actually effected; is that correct, sir?

"A Well, no.

"Q That's not correct?

"A I don't understand you.

"Q Well, was it one of your duties to see that the crew who you advised pursuant to your agent's instructions

to protest did in fact protest?

"A Yes, they did protest. They notified the captain that they were protesting that they would sign the articles under protest, and I also notified the captain that the problem of the 30 days' pay was not finished, that I was taking it into the office, and therefore the crew were told by me to sign under the protest.

"Q On all the prior times that you mentioned before on foreign articles that you have been involved with while sailing, while a patrolman, and a protest is made, is that made to the Government official or is that made to the captain or is it made to both?

"A Well, I --

"Q Well, from your prior experience.

"A I tell the captain. I am to refer to the captain or whoever is representing the company.

"Q Never to the Government official?

"A No, not me. The crew members, yes, but not me."

Page 23.

"Q In your prior experience, have protests of various nature, whether written or oral, been brought to the attention of the Shipping Commissioner?

"A No.

"Q You have never seen one?

"A (Witness shaking head negatively.)

"Q Have you in your prior experience ever been involved with a statute such as the one we are dealing with here today which we have termed legal 46 U.S.C. 594?

"A No.

"Q Have you ever read the statute, sir?

"A No.

"Q This is the first occasion you have had a situation like this?

"A Yes."

Turning now to page 26, line 16.

"Q Were you present in the same room with the Shipping Commissioner when this crew were actually signing off the articles on January 21st?

"A When I took the grievances to the master, the Shipping Commissioner was present.

"Q No. I mean after you came back from your conversation with Mr. George, did you then stay in this room where the Shipping Commissioner was during the sign-off or did you have other duties to perform?

"A No, after that I have other duties to perform, and I left after I notified the captain that the crew members were signing under protest.

"Q So you were not actually present during the sign-off?

"A No."

That's all I have from this deposition.

MR. MC MAHON: Page 4, line 7. This is in the examination by me of Mr. Mauricio.

"Q Are there any other duties?

"A Also my duties are to enforce the constitution and shipping rules among the members of the union.

"Q Is that a full description of your duties?

"A Yes.

"Q Now prior to 1971, how long were you a patrolman for the National Maritime Union?

"A I have been a patrolman since 1958.

"Q And is it all out of the New Orleans union hall?

"A Yes.

"Q And above you in the rank of the union, who would be above you in the union in rank?"

THE COURT: You have to remember that the reporter is trying to get this down.

MR. MC MAHON: Line 20, page 4.

"Q And above you in the rank of the union, who would be above you in the union in rank?

"A The agent of the port.

"Q The agent of the port?

"A Yes.

"Q The agent of the port, he is a union official?

"A Yes.

"Q In January 1971 who was the agent for the Port of New Orleans?

"A S. D. George.

"Q Do you know his present whereabouts?

"A He is dead.

"Q Mr. George is dead?

"A Yes.

"Q When did he die, if you know?

"A About two months ago, you know, more or less."

Page 5, line 19.

"Q Now, was Mr. George the only agent in the Port of New Orleans in January 1971?

"A Yes.

"Q And above Mr. George in the union hierarchy, who was, if you know, who would be above him?

"A National office.

"Q That would be the New York office?

"A Yes."

Page 6, line 8.

"Q Prior to 1958 when you became a National Maritime Union patrolman, what did you do?

"A I was a seaman.

"Q You were a seaman? And how long did you go to sea?

"A From 1944.

"Q And in the course of going to sea those 15, 16 years, did you sail on the foreign articles?"

That should be under, your honor, the word "on."

MR. PHILLIPS: So stipulated.

MR. MC MAHON: "Under the foreign articles from time to time?

"A Yes.

"Q Can you approximate for me about how many times you sailed under foreign articles, sir?

"A I would say maybe -- I would say about maybe two, 300 trips.

"Q And since the time you became a National Maritime Union patrolman in 1958, did you have occasion from time to time to participate in termination of foreign articles?

"A Yes.

"Q Again, can you approximate how many sets of foreign articles did you participate in the termination of?

"A Four or 500."

Page 7, line 22.

"Q How were you advised that this vessel was to be paid off? Who informed you that the vessel was paying off at the location where it was to be?

"A The company.

"Q Texaco?

"A Right. We called the companies in the mornings and we got a lineup and we were instructed that the ship was due for pay-off."

Page 8, line 11.

"Q Now, do you receive written instructions to go aboard that vessel from anyone?

"A No.

"Q Do you make any notes prior to boarding that vessel?

"A No.

"Q Do you receive any memorandum or anything in connection with your boarding that vessel for the sign-off?

"A No.

"Q Prior to you going to that vessel on January 21st did you receive any specific instructions pertaining to that sign-off?

"A No."

Page 9, line 1.

"Q Were you advised in any way that any difficulties may be encountered of any nature?

"A No.

"Q In connection with that sign-off?

"A No.

"Q Were you advised that any crew members of that vessel had written to various National Maritime Union halls about a possible problem on that sign-off?

"A I have no recollection of any.

"Q There may have been, but you don't know about it?

"A Right.

"Q On that day you didn't know about it?

"A No."

Page 11, line 20.

"Q Do you recall the dock or place where the vessel was to tie up?

"A Yes, it was in Taft, Louisiana.

"Q In Taft?

"A That's right.

"Q Do you recall whether you got to Taft after the vessel arrived or before?

"A I got there after the ship arrived, yes.

"Q And did you immediately board the vessel upon her arrival?

"A Yes.

"Q And who did you first talk to when you boarded the vessel?

"A To the crew member .

"Q To the unlicensed crew members?

"A Yes.

"Q When we refer to the unlicensed crew members, they are all members of the National Maritime Union?

"A Yes, sir, they are.

"Q And you yourself are a member of the National Maritime Union?

"A Yes, sir, I am.

"Q Did you talk to the unlicensed crew members before you talked to the captain?

"A Yes.

"Q Had the pay-off commenced when you arrived there already?

"A No."

That's all I have, your Honor.

MR. PHILLIPS: No redirect.

Now I wish to read from the deposition of Mr. John McCarthy. This is examination before trial of the defendant by the person of Mr. John McCarthy, taken pursuant to order of this Court, starting at page 3, line 13.

"This deposition is taken pursuant to order of Honorable Constance Baker Motley, District Judge, and pursuant to the notice previously served upon the defendant.

"John McCarthy, a defendant witness, having been first duly sworn by a notary public of the State of New York,

was examined and testified as follows. By Mr. Phillips.

"Q What is your name?

"A John McCarthy.

"Q Where do you live?

"A 3048 Bryant Avenue, Groves, Texas.

"Q Are you employed at the present time, sir?

"A I am.

"Q By whom are you employed?

"A Texaco, Inc.

"Q What is your title with Texaco?

"A Superintendent, employee and labor relations.

"Q How long have you been employed by Texaco?

"A Nineteen and a half years.

"Q How long have you held your present position?

"A Four years.

"Q What are your present duties?

"A I am in charge of personnel and labor relations matters involving the United States fleet of Texaco.

"Q What was your position prior to the present position that you now hold?

"A Supervisor, labor relations.

"Q How long were you supervisor of labor relations?

"A Approximately seven years.

"Q What were your duties as supervisor of labor

relations?

"A To advise and counsel United States fleet masters regarding labor matters aboard our Texaco vessels.

"Q Are your duties limited to the marine operations of Texaco, namely the operations of their vessels?

"A Yes, sir.

"Q In 1967 when you were supervisor of labor relations, did your duties include attendance at pay-offs?

"A They did.

"Q And did any of the Texaco vessels at that time make foreign or intercoastal voyages?

"A They did.

"Q And it is correct, is it not, when a foreign or intercoastal voyage is made, the shipping articles, which are the employment contract for that voyage, are signed in the presence of a Shipping Commissioner of the United States at the commencement and at the termination of the voyage?

"A That is correct.

"Q Now, did you bring with you pursuant to the notice of deposition payroll records relating to the voyage of the SS Texaco Georgia which commenced somewhere on or about October 4, 1967 and terminated on or about October 6, 1967?"

MR. MC MAHON: Your Honor, at this point will the Court please note my objection to this particular line of

questioning on the Texaco Georgia on the grounds of materiality and relevancy to this litigation.

THE COURT: Yes, I will note it. Overruled.

(Mr. Phillips continues reading.)

"A I did.

"Q And were the dates which I mentioned correct both for the commencement and termination of the voyage?

"A I believe you are right.

"Q In any event, there is no question that that voyage did not last for 30 days or more; isn't that true?

"A That is true.

"Q Now, what type of shipping articles were signed? That is to say, was this voyage we are talking about an intercoastal or foreign voyage when they signed those articles?

"A Texaco Georgia?

"Q Texaco Georgia, on October 4th.

"A Intercoastal.

"Q Those were articles which were signed in the presence of a Shipping Commissioner?

"A Yes."

Turning now to page 7, line 3.

"Q Was there anything different in those shipping articles as compared to the shipping articles as signed by

the crew of the Texaco Illinois [illegible] the voyage in suit, and so that you understand what I am saying, I am referring now only to the printed form?

"A Only to the printed form?

"Q Only to the printed form.

"A It would be no different.

"Mr. McMahon: I take it by printed form you mean the form without the blank filled in?

"Mr. Phillips: Exactly.

"Mr. McMahon: So that the record is clear."

MR. MC MAHON: Can we agree, Mr. Phillips, that the form is the form marked in evidence here as Defendant's Exhibit A?

MR. PHILLIPS: Yes. We were talking about all of the printed matter on all of the pages of Exhibit A.

"Q Now, that voyage was not completed in accordance with the shipping articles, correct?

"A Right.

"Q Were you present at the termination of the voyage at the pay-off, if you remember?

"A I was not present. I was in my office.

"Q Was somebody there on your behalf?

"A Yes.

"Q Were the crew members who had signed the shipping

articles given or paid in addition to the earned wages for the three-day voyage 30 days additional wages?

"A Yes. All but except I think four unlicensed seamen who did not sign the articles.

"Q Now, did all of the men, the seamen that received these wages, the 30 days' wages, did they continue in the employ of the vessel?

"A Yes.

"Q When was the 30-day pay given to the seamen who did receive it on the Texaco Georgia?

"A Sometime after October 6th. I don't remember the exact date.

"Q There was no lawsuit brought against Texaco by the seamen at that time; isn't that true?

"A True.

"Q They also signed off; isn't that correct?

"A That is true.

"Q And did not sign off under protest; isn't that true?

"A True."

Continuing now at page 9, line 22, I believe it is.

"Q Now, the Shipping Commissioner is not involved with the settlement of grievances; isn't that correct?

"A That is correct.

"Q The men who are on board the ship and working are

also obligated to sign off at the general pay-off; is that correct?

"A Correct."

Dropping to line 15.

"Q From your observation and experience during the times you were present at the pay-offs of the type we described, the practice has been for the seamen to report directly to the Shipping Commissioner, identify himself, the Shipping Commissioner then points out where he is to sign and he signs and gets his discharge and then gets his money; is that correct?

"A Correct.

"Q And is it not also correct, in your experience you have never heard the Shipping Commissioner read any portion of the shipping articles to a seaman at a sign-off?

"A Correct."

Turning to page 12, line 18 -- I think I better back up a little bit. Starting at line 9 on page 11.

"Q At the time of payment of the 30 days on the Texaco Georgia, what were the circumstances which led Texaco to pay that money?

"A Initially the vessel was scheduled to make an intercoastal voyage throughout the Panama Canal and to the West Coast. Sometime during the course of the loading

operation, which lasted a couple of days, it was determined that the vessel would not make that trip but would instead make the trip to -- up the East Coast, I don't recall the port of destination.

"So I notified people in my office to rush down to the ship and to stop the sign-on.

"Q Well, was there any discussion held with the Shipping Commissioner on that occasion regarding the payment of those wages?

"A As soon as we notified the ship that we were stopping the sign-on, the union made a contact, contacted me and told me that the aborting -- I am not sure they used this word, but this aborting of the articles would require the payment of 30 days' wages.

"I told him I'd look into this thing.

(Continued next page.)

lhrf 3 -1 "McCarthy

"Q Referring to who?

"A Patton, the NMU agent.

"MR. PHILLIPS: Would you tell us where?

"THE WITNESS: He is the NMU agent in Port Arthur.

"A (Continuing) And I told him I would have to check into it. He advised me that the shipping wouldn't sail until such time as this payment was made. I then made contact with the Shipping Commissioner, Mr. Benedetto, the Commissioner on the scene, and I asked for his opinion on this claim, and he told me that the claim would be payable.

"So based on these two judgments of delaying the sailing of the vessel and not getting any type of favorable comment from the Shipping Commissioner, I advised our people to make payment -- to make the payment of the additional 30 days, which we did."

That is all I have from this deposition.

MR. MC MAHON: May I have a moment? I don't think I am going to read out of here now.

THE COURT: All right.

MR. PHILLIPS: Plaintiffs rest.

MR. MC MAHON: Your Honor, I have no questions out of this deposition.

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THE COURT: We will take a brief recess at this time.

(Recess.)

MR. PHILLIPS: I respectfully move to reopen the plaintiffs' case at this time for the purpose of entering a stipulation that in the event that the Court finds that counsel fees are warranted in this action, that a separate hearing will be held to determine the value thereof.

MR. MC MAHON: Without conceding the right of the plaintiff to any form of counsel fees, we so agree to this stipulation.

MR. PHILLIPS: Plaintiff now rests.

MR. MC MAHON: Defendant moves for a directed verdict on the grounds that the plaintiffs have not made out a prima facie case. I don't know if your Honor wants to go into it now.

THE COURT: Do you have any grounds for your motion or is it just proforma?

MR. MC MAHON: I don't feel that it is proforma, I feel your Honor will deny it in light of the position you have already taken, but our position is clearly that as set out in the Jones case, which I am back to, and not that as outlined in Judge McMahon's opinion, which

lhrf 3

is a motion by my office on behalf of my client, Texaco won it, and we don't feel that Judge McMahon framed any issues in this case.

THE COURT: What was the Jones case again?

MR. MC MAHON: That the release is prima facie evidence of the proper discharge of the seaman. It has been held that a seaman's release executed in the presence of and attested to by a United States Shipping Commissioner, in the absence of a showing of fraud or coercion, is valid, citing Jensen versus Barber Steamship Lines, 110 MISC, 632, 180, New York Sup., 754; Jones against American cite from this very court is 285 Fed. Sup. 345.

Your Honor, we believe that there is obviously no fraud or coercion in this case. Certainly Texaco did all in their power to clear up the problems. They had a Shipping Commissioner. This was done through a Shipping Commissioner, not through Texaco or any attorneys. This was a Government official.

The whole body of the release is different and the velour of the release is different in this case.

THE COURT: That is why I asked you whether the seamen read the articles which you say they signed, or got a copy.

MR. MC MAHON: It says on here it is mutual

lhrf 4

consent. This is not like a red letter release in a personal injury case where you go over to a seaman's house and get him to sign through Texaco's attorneys. This is a Government document, and the man has signed on admittedly 500 or 1000 times. What obligation should be placed on Texaco to make the seaman understand this release, I don't think that is where the burden rests, your Honor, on Texaco to make them proceed under these articles --

THE COURT: What does it say next to the signature?

MR. MC MAHON: It says in black letters, your Honor, "Release." It is above the column on the signature. "When the undersigned seamen do hereby each one for himself by our signatures herewith given in consideration of settlement made before the Shipping Commissioner release the master and owners from all claims for wages in respect of this voyage or engagement and I, the master, do also release ach of the undersigned seamen from all claims in consideration of this release signed by them."

They have all signed it underneath, your Honor. Of course, it is not Texaco's obligation to review the articles, that is the Shipping Commissioner. The entire statute contained in 46 U.S. Code under the Act,

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that is the purpose of the Shipping Commissioner being there. There are numerous other statutes requiring the Shipping Commissioner to be aboard the ship. There is another statute, 644, U.S. Code --

THE COURT: Didn't the Shipping Commissioner here testify that he was not familiar with this statute, or was that some other --

MR. MC MAHON: But should Texaco be imposed liability for that? That is not Texaco's responsibility, as we see it, to see that the Shipping Commissioner supplied by the U.S. Government -- they have no choice in this -- is familiar with the statute of the law, if Texaco had anything to do with it, to be perfectly honest with you, I was just talking to my client, we would never have signed the foreign articles.

All the ship was going to do is go from the East to the West Coast. It is because of the somewhat archaic rules of the Government that required Texaco to open these articles.

THE COURT: When you say the seamen signed that, what are you saying, that they consented to the termination and waived whatever rights they may have under the statute?

MR. PHILLIPS: In futuro.

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THE COURT: Please don't interrupt, because we can't have an argument like this -- if the defendant's lawyer is making a statement, you will have a chance to reply.

MR. MC MAHON: Contained on the shipping articles --

THE COURT: I am asking what your claim is with respect to the signature.

MR. MC MAHON: The mutual consent termination is noted in here, the Shipping Commissioner has noted, "M/C" and cause of termination.

One case a man was taken off, he was taken to the hospital. Everything else was on mutual consent on this ship. When they sign off on mutual consent, they also sign this form of release and their names are thereunder. They had a union representative there who we didn't prevent from coming, they had a Shipping Commissioner handle this, whose obligation it was, not Texaco's. Texaco's only obligation was to pay the men properly, and we feel they did.

The problem of the release is between the men and the Shipping Commissioner. This is a Government requirement and not Texaco's. That is the purpose of the Shipping Commissioner being there, your Honor. The cause column I referred to is column 3. That's where the

lhrf 7

M/C is.

THE COURT: What does M/C stand for?

MR. MC MAHON: Mutual consent, your Honor. That is how the seamen sign off a vessel. While it may be a legal conclusion in a court of law, a seaman knows more about mutual consent when he leaves than anyone else. There is mutual consent, there may be hospitalization, there may, of course, be injury.

THE COURT: Let me ask you this:

If the seaman was not aware of his right under the statute, you mean to say that by signing this he waives it?

MR. MC MAHON: No. Your Honor, first of all I think the testimony is legion that he was fully aware of his right under the statute. He had union representatives there long before the signoff. They had meetings on their rights under this statute. That is what I have been reading here all morning, the meetings, the minutes of the meetings will reflect that. They knew their rights under the statute.

THE COURT: It seems that there is some question as to whether they did, isn't there?

MR. MC MAHON: Your Honor, if there is a question that at the time of their signoff they knew

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their rights under the statute, I don't think Mr. Phillips will really dispute that, I think the question is, and we come back to the effect of the release, in a general seaman's release, your Honor, as I understand this proceeding, your Honor is saying that the standard rule a-plies, that Texaco must show fairness, that they knew what they were doing and the usual five elements of Garrett against Moore-McCormack. What I am saying is that under the Jones case, that is not required when a release is before an official of the Government.

It is different than a seaman's release. Judge Pollack has so held. The requirements only are to show no fraud or coercion, and I certainly think we have cleared those problems up. There is certainly no fraud here. There are union officials on the ship, Government officials on the ship, and therefore the release is prima facie valie.

THE COURT: Judge McMahon's opinion cites a Second Circuit case, the SS Standard Bonici versus Standard Oil of New Jersey, 103 F. 2d, 437, Second Circuit case, and Jones versus American Export Isbrantsen Line, Inc., 285 F. Sup. 345, Southern District of New York, 1968 case, for the proposition that consent to the termination of a foreign voyage is a defense under

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594, but to establish it the defendant must show that it was given, one, without any duress, and, two, with full knowledge of what it meant.

Therefore, the burden is on the defendant to show that the seamen here had full knowledge of what they were doing when they signed that shipping articles.

MR. MC MAHON: May I be heard, your Honor, because it is at that part where we part ways, and I disagree with Judge McMahon's holding in that respect, if it is a holding. I don't think it was necessary for the determination of the summary judgment motion. I think he is misstating the Jones case, and the Bonici -- the Standard Bonici versus Standard Oil --

THE COURT: The Jones case is the one you are relying on.

MR. MC MAHON: It refers to fraud or coercion, but it doesn't establish the fact that I have to show the awareness. That is the difference in this situation from the Standard seaman's release case that I am arguing for the validity of this release as prima facie.

The Standard Bonici versus Standard Oil cited, they go into it, but that was not a Shipping Commissioner release. It was taken by the steamship company, your Honor.

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THE COURT: The testimony here is that nobody read any portion of this to the seamen, isn't that so?

MR. MC MAHON: Yes, your Honor.

THE COURT: The second thing is that you admit no seaman had a copy of this in his possession. Isn't that so?

MR. MC MAHON: Your Honor, they signed on. I don't know that. I don't admit that.

THE COURT: That's the whole point of this. That is exactly it. To say that a seaman would stop and read this, all this fine print on here, before he signed off, if he had a discussion with somebody that told him his wage problem would be taken up, it seems to me that it would be prima facie evidence of fraud to say that the seamen would have to be bound by signing an article this long with this kind of fine print. It is like saying that somebody takes out an insurance policy and if he can't read the fine print on there for some reason, that is too bad.

MR. MC MAHON: There are further U.S. statutes that will be referred to in any post trial brief respecting the effect of that release under articles, and the rules for settlement. The main one I refer to is 46 U.S. Code 644.

lhrf 11

I recognize that this archaic form which is imposed upon Texaco as much as it is upon these seamen by the Government leaves a lot to be desired. But what is happening in this case is that liability is sought to be imposed on Texaco for --

THE COURT: That is why you have -- first of all, we are dealing with unlettered, unschooled seamen who according to the testimony of one of them finished the sixth grade, so we are going to have to presume that he could read and write, and that's the reason the burden is on the shipping company under this statute, to prove that the seaman knew what he was doing when he signed this long, complicated, involved document.

That ought to be as plain as the nose on anybody's face that that is the purpose of this. If you were dealing with lawyers, talking to lawyers, that would be something else. They would be expected to read and understand a document before they sign anything.

With ordinary people who finish maybe the sixth grade, that is not expected of them, and their rights are not waived by signing any such long complicated document, just by showing that they signed it.

Let's move on from there. What else do you have?

MR. MC MAHON: Your HOnor, I move on the

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grounds of the release. I also move on the grounds that the testimony thus far has indicated and further testimony to be adduced will indicate that one or two of these men continued in our employment --

THE COURT: One or two continued in your employment?

MR. MC MAHON: Except one or two. Continued in our employment, lost no monies, lost no wages, and therefore are not damaged, and this again, we are coming back to the constitutional issue of this statute, that it constitutes an unjust enrichment, a penalty upon Texaco and denies Texaco due process to impose it in this situation.

THE COURT: The motion is denied.

Do you have anything further?

MR. MC MAHON: I have a witness, your Honor. The defendant calls Mr. John McCarthy.

J O H N M C C A R T H Y, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MC MAHON:

Q Mr. McCarthy, by whom are you presently employed?

MR. PHILLIPS: I think we covered his present

position. Can we get right into the meat of this?

MR. MC MAHON: Let me ask the witness this, your Honor, based on the deposition already read in.

THE COURT: Is this the same man who testified by deposition?

MR. MC MAHON: Called by the deposition, yes, your Honor.

Q It has been testified hereto before in your deposition, Mr. McCarthy, that previous to this situation involving the Texaco Illinois you were involved in the preparation of intercoastal articles for the Texaco Georgia; is that correct, sir?

A That is correct.

Q Can you tell the Court when that occurred?

A Sometime in October of '67.

Q Was the sign-on of the crew under those articles on the Texaco Georgia completed?

A No.

Q Did the ship ever sail?

A Yes.

Q Did it ever sail under those articles?

A No.

Q Did it ever leave the dock under those foreign articles?

A No.

Q It has also been pointed out in your earlier testimony that you approved payment to the unlicensed crew of an extra 30-day wage.

Can you tell the Court the circumstances under which you approved that payment?

A I received advice that the ship was not going to make its intended voyage to the West Coast, and that there was no need to go under articles.

MR. PHILLIPS: I object at this time. I direct the Court's attention to page 11 of Mr. McCarthy's deposition. The same question that was just asked was asked by Mr. McMahon and is in the record. The question was, "At the time of payment of 30 days on the Texaco Georgia, what were the circumstances which led to Texaco to pay that money."

That is precisely the question he just asked him. That was asked and answered.

MR. MC MAHON: Your Honor, I am not sure if this is clear in this record. I want the Court to understand why this vessel didn't sail, that it was under duress by the union, and why that payment was made, and how it is different from the payment that is now claimed in the Texaco Illnois.

THE COURT: Who took the deposition of Mr. McCarthy?

MR. MC MAHON: The plaintiffs' counsel, your Honor.

MR. PHILLIPS: The deposition was taken pursuant to my notice, but the specific question to which objection is made was asked by Mr. McMahon.

THE COURT: What page?

MR. PHILLIPS: Page 11, line 9:

THE COURT: So you want to ask him again what?

MR. MC MAHON: I would like it clear on the record, your Honor. I don't think it is repetitive. I want it clear, the circumstances under which the Texaco Georgia did not -- payment was made of this claim for wage in this case, in the circumstances of the Texaco Georgia.

THE COURT: Incidentally, I notice from looking at this Defendant's Exhibit A that on the bottom of it the attention of the masters of the ships is especially invited to certain requirements of law. Is that it?

MR. MC MAHON: I don't have the benefit of the articles before me.

THE COURT: And Section 594 is not one of them, is it?

MR. MC MAHON: Your Honor, I can only refer to the case again of Newton against Gulf Oil which put heavy emphasis on the release contained in the articles.

THE COURT: I just asked a question which I would like you to answer for the record. That directs the master's attention to certain requirements of law, does it not?

MR. MC MAHON: Yes, your Honor.

THE COURT: And Section 594 is not one of the requirements of law to which his attention is directed, is that so? I looked on there and didn't see it. Maybe you can find it. I looked at it hurriedly.

MR. MC MAHON: It does not appear to be here, your Honor.

THE COURT: But it is your contention that when the seamen signed that, he waived his rights under that, is that it, and should have known the contents of that document that he is signing, is that it?

MR. MC MAHON: Your Honor, it is my contention that he did waive it based on the case law under this section, particularly the Jones against American Export case and the Newton against Gulf Oil case, where liability in the Third Circuit was imposed on the shipowner and they placed heavy reliance in those cases on the protesting

being placed on the shipping articles.

THE COURT: I just wanted to make sure what your contention is.

Proceed. You can ask the question.

MR. PHILLIPS: May I make a brief comment on the Jones case, because it has been misrepresented very badly.

THE COURT: Mr. Phillips, I have asked you not to interrupt.

(Record read.)

A I then sent someone down to stop the signing-on procedure and the man got down there, and I believe there were four people that he was able to stop from signing.

The next contact I had was from the union agent telling me that we owed the 30 days pay on top of the wages that they would normally earn and that I should understand the ship wouldn't sail unless this money was paid.

I told him I'd have to look into this thing. This is the first time it had ever happened to me. I made contact with the Shipping Commissioner, Mr. Benedetto. He decided that in his opinion that would be the proper payment that would have to be paid.

Not wanting to hold the ship up, she had already

been in the port a couple of days, I contacted my people and discussed the matter, and the payment was made.

THE COURT: I don't know what you mean when you say in addition to the payment that would normally be made.

THE WITNESS: By that, your Honor, I mean that they would get 30 days'pay on top of any wages that they would normally earn during that 30-day period, including base wages.

THE COURT: I don't understand that at all. This involved a ship that was about to take off and did not, is that it?

THE WITNESS: Yes, your Honor.

THE COURT: Where was the ship going?

THE WITNESS: Originally she was supposed to go to the West Coast. But then it was changed.

THE COURT: It never sailed at all?

THE WITNESS: That's right. She went to the East instead. She went some place on the East Coast instead.

THE COURT: What was the reason for the cancellation of the trip to the West Coast?

THE WITNESS: I can't give you an answer on that one. It was just a change of operating orders.

THE COURT: So then the men were signed off?

THE WITNESS: No, your Honor. They would stay aboard the ship. For example, can I use an example as an illustration?

THE COURT: No, just tell me what happened.

THE WITNESS: The men never left the ship. The men stayed on her articles. What they did is they signed off the Commissioner's articles, then they would sign on what we referred to as master's articls which covers them for the coast, and these same people made the trip up East that were intended to make the trip to the West Coast. There was no change in the complement of the crew.

THE COURT: Now I understand it. So they got 30 days' pay which they would have earned if they had stayed on those articles, is that it?

THE WITNESS: They got their wages that they earned, plus an additional 30 days' pay.

THE COURT: But you said they didn't earn any because it never left, is that right?

THE WITNESS: It didn't go to the West Coast. It went up the East Coast.

THE COURT: So they got 30 days' for what they would have earned going to the West Coast, is that right?

THE WITNESS: All right.

THE COURT: Did they or didn't they?

THE WITNESS: I am just saying they got 30 days additional pay.

THE COURT: I am trying to understand what you are saying. Did they get 30 days' for the trip to the West Coast which they didn't earn?

THE WITNESS: Yes, your Honor.

THE COURT: On top of that they got 30 days?

THE WITNESS: Correct. I am sorry, yes.

THE COURT: For going up the East Coast?

THE WITNESS: Yes.

BY MR. MC MAHON:

Q Mr. McCarthy, did you receive any communications from the union in connection with the Texaco Georgia with respect to its sailing?

MR. PHILLIPS: That has been asked and answered, your Honor.

THE COURT: Did he receive any what?

MR. MC MAHON: Communications from the National Maritime Union with respect to whether the Texaco Georgia would or would not sail.

A Well, that was my first contact. They told me I had to pay.

Q Or else the vessel wouldn't sail?

A Right.

Q In the Texaco Illinois, no such threat was made, was it, Mr. McCarthy?

A No.

Q Getting back to --

MR. PHILLIPS: Your Honor, I move to strike that question. The characterization as to threat is highly improper.

MR. MC MAHON: I think it is a very strong and poignant economic threat, your Honor, that Texaco in the case of the Georgia either paid that 30 days and didn't dispute it or the vessel wouldn't sail.

MR. PHILLIPS: I think whether it is a threat, your Honor, is for you --

THE COURT: If I understood the witness' testimony, he called his union, is that it?

MR. MC MAHON: Not his union.

THE COURT: Pardon me, his office, and discussed the matter, and they agreed to pay it. Is that it?

MR. MC MAHON: After the threat was made, your Honor.

THE COURT: He didn't testify to that, did he?

THE WITNESS: Yes.

MR. MC MAHON: I thought he did.

MR. PHILLIPS: Your Honor, it is the characterization of threat here, there is no claim of a threat. He testified that the union told him they wouldn't sail until it was paid, that he called the Commissioner, and the Commissioner told him it was properly payable. There is no evidence here of any threats or coercion or anything of that nature.

MR. MC MAHON: He just testified to the threat, your Honor, that the vessel would not sail.

MR. PHILLIPS: This is a characterization.

THE COURT: Whether it was a threat is a conclusion. But his testimony was that, as he testified on his deposition, that he talked to the Commissioner and the Commissioner said it was payable, and then he talked to his office and they told him to pay it. Is that it?

MR. MC MAHON: May I ask the witness this, your Honor:

Q Did you talk to your office after the union first communicated with you to advise you that the vessel wouldn't sail unless the payment was made?

A Right.

Q Getting back, Mr. McCarthy, to the Texaco

Illinois, did there come a time after she departed Port Everglades, Florida, on January 6, 1971, that you were advised that she was to be diverted back to a U.S. port?

A Yes.

MR. PHILLIPS: Your Honor, the question of diversion has been covered ad nauseum.

MR. MC MAHON: Your Honor, I have to lay a foundation for what I want to get into here. I want to get into certain communications this witness had with others.

THE COURT: Are we still on the Georgia matter?

MR. MC MAHON: No, back to the Illinois now.

THE COURT: All right.

BY MR. MC MAHON:

Q Of course, the issue of diversion was not made by your department, the employee relations department?

A No. That is operating.

THE COURT: What was the reason for the diversion in this case? I don't understand that.

THE WITNESS: The ship was sent from Port Everglades -- it was originally intended to go down to the Panama Canal to off-load a ship that was in trouble down there and to take that ship's product to the

West Coast. Enroute to the Panama Canal, the problem with the ship that was down there was corrected, and it was therefor not necessary to send the Illinois down there. Instead, she was diverted to Trinidad and picked up a cargo there and then brought back to Taft, Louisiana.

Q After you were advised of this diversion and before the Texaco Illinois arrived at Taft, did you communicate with certain National Maritime Union officials?

A Yes.

Q When did that communication take place?

A It was approximately two days before the ship arrived in Taft.

Q And the ship arrived in Taft, did it not, on or about January 21st?

A The 21st.

Q So on or about January 19th you communicated with NMU officials?

A Right.

Q Where were those officials located?

A In New York.

Q That's at the national headquarters of the National Maritime Union?

A Right.

Q Did you contact a specific unit of the

National Maritime Union here in New York?

A Contract enforcement.

Q Did you speak to a gentleman in that unit?

A Yes.

Q What was his name?

A Mauricio.

Q What did you inform him regarding the termination of these articles, the prospective termination of these articles?

A I told him the ship was coming back and she wouldn't have been going 30 days, and there was a -- you know, this business of articles has always been a touchy business in our trade, and, of course, having been burned once on the Georgia I didn't want to get burned again.

I am trying to anticipate, if we had any particular problems, if it was necessary for me to send anyone over to Taft to assist at the sign-off. Otherwise, I would just simply let the master do it.

So I contacted him. He told me he would look into it and he would refer it to legal, "And I will get back at you."

Then approximately two days after the 21st I got a call from another union official in New York advising me that I had a problem on the ship.

I said, "I don't know what you mean about a problem."

The ship was already signed off and gone.

Q In other words, this is two days after the termination of the articles?

A Somewhere around the 23rd.

Q Between the time of that first phone call when they told you they would get right back to you and two days after the sign-off, you didn't hear from them?

A No.

Q And you, of course, sought them out to avoid a problem with the articles, did you not?

A If there is a problem, I want to know about it before it becomes a problem.

Q At the time of the phone call on or about January 19th, they didn't indicate there would be a problem, did they?

A No.

MR. PHILLIPS: Objection, your Honor. That is a misstatement of the witness' own testimony.

THE COURT: Yes. He said they would get back to him.

Q Besides the National Maritime Union officials,

did you contact the Coast Guard before the vessel arrived at Taft, Louisiana?

A I called the Commissioner Davidson in New Orleans. He is the senior Shipping Commissioner, to find out from him if I am having problems, again thinking back on the Georgia. He told me that under no circumstances would we be obligated to make any payment, and I referred him back to the Georgia case.

He said, "Well, that is an entirely different set of circumstances."

He said, "You aborted articles, and you get involved" --

THE COURT: Who is telling you this?

THE WITNESS: The Shipping Commissioner, Davidson.

MR. MC MAHON: The senior Shipping Commissioner of New Orleans.

MR. PHILLIPS: Objection. Counsel is not testifying.

THE COURT: Sustained.

MR. MC MAHON: That is his testimony.

THE COURT: Whose testimony?

MR. MC MAHON: He testified he contacted a Mr. Davidson who was the senior Shipping Commissioner in New Orleans, Louisiana, who advised him here. I will

read the record back, if your Honor chooses.

THE COURT: That is what the objection is, I guess, to hearsay. He is telling us something that somebody told him in New Orleans who is not here to be cross examined.

MR. MC MAHON: This is a statement by a Government official in the normal course of his business.

THE COURT: I never heard of any such rule of evidence. Plain, unadulterated hearsay, offered for the truth of what was said.

MR. MC MAHON: Your Honor, I think Texaco's state of mind is in dispute in this case.

THE COURT: Texaco must have had lawyers. Are you suggesting they didn't have lawyers to advise them of what their legal obligations were? Is that the suggestion?

They have to go to the Government and ask?

MR. MC MAHON: Your Honor, Texaco's lawyers -- I don't think there is any requirements. It is the Government that runs the sign-off, not Texaco, your Honor.

THE COURT: That is ridiculous. Either Texaco is bound by this statute or they are not. We are not bound by what some Shipping Commission told this man

the law required. So in addition to being hearsay, it is irrelevant, that somebody in New Orleans told him something that this Court has to decide.

MR. MC MAHON: Your Honor, again I would except because I think it is a Government official acting in the regular course of his business.

THE COURT: There is no such rule. I never heard of it. Unless you have a case to support that, please don't repeat it.

Q Was Texaco, Mr. McCarthy, furnished in the regular course of its business with minutes of the meeting of the unlicensed crew of the Texaco Illinois occurring on the Illinois in January, 1971?

A Yes.

Q Is it the regular course of the business of Texaco to receive these minutes?

A Yes.

THE COURT: What's the date?

MR. MC MAHON: January, 1971. It is undated, your Honor. These are minutes, January, 1971.

Q I show you these minutes, Mr. McCarthy. Are these the minutes that Texaco was furnished with?

A Yes.

MR. MC MAHON: I would ask that they be marked and

offered into evidence, your Honor.

(Defendant's Exhibit C marked for identification.)

MR. PHILLIPS: No objection.

(Defendant's Exhibit C received in evidence.)

Q Mr. McCarthy, there has been testimony here today that Captain Claybourn was aware of the dispute involving Section 594 alleged wage and that a copy of these minutes to support that dispute was furnished to him before the sign-off.

Can you, by referring to these minutes, tell me when these minutes were prepared?

A They would have to have been prepared sometime after January 24th or I should say after January 21st, but probably after the 24th.

Q What do you base that conclusion upon?

A There are two items essentially. One is under the subject of new business, subparagraph (b) here, it says, "A discussion to seek a higher ruling from national office from Port of New Orleans on all money fees regarding intercoastal articles being broken," which would indicate it was after that fact.

Q After the fact of the articles being terminated?

A Right.

Q In other words, that this was prepared after the fact that the articles were terminated?

A Correct.

THE COURT: Wait a minute. Is this witness testifying to his supposition as to when these minutes were prepared?

MR. MC MAHON: No, your Honor. He is testifying based on certain facts contained in these minutes, it is not his supposition, your Honor.

THE COURT: The minutes are undated, is that it?

MR. MC MAHON: They are dated just January, 1971.

THE COURT: Does he prepare the minutes?

MR. MC MAHON: No, he does not.

THE COURT: Who does?

MR. MC MAHON: These are prepared by the National Maritime, the crew.

THE COURT: You want him to tell us when in his opinion they were prepared?

MR. MC MAHON: No, there are facts in those minutes that indicate when they were prepared, your Honor.

MR. PHILLIPS: In that case, the minutes will

speak for themselves.

THE COURT: I would think so.

MR. MC MAHON: I don't think they can speak -- your Honor, there is a seaman who signed these minutes who was not on the ship on January 21st, who according to Texaco's crewlist never got on the ship until January 24th. This witness is certainly qualified and competent to testify as to that.

THE COURT: Yes, but you are telling him to look at the minutes and give us his opinion as to when those minutes, undated, were prepared. That's a different thing. Witnesses are called to tell us what they know of their own knowledge, not what they suspect or surmise by reading a document.

It is improper examination of the witness.

BY MR. MC MAHON:

Q Of your own knowledge, Mr. McCarthy, can you tell me whether those minutes were prepared before or after January 21, 1971?

MR. PHILLIPS: Objection, your Honor. There has been no foundation as to what the basis of his knowledge is.

THE COURT: Yes.

Q Is there a seaman who signed that by the name of Kraft?

A Yes.

Q Did you at my request check the crewlist for the Texaco Illinois for that period in question?

A I did.

Q Did you ascertain when Mr. Kraft signed on that vessel?

A I did.

MR. PHILLIPS: Objection, your Honor. The best evidence rule.

MR. MC MAHON: The crewlist?

MR. PHILLIPS: The crewlist is the best evidence.

(Defendant's Exhibit D marked for identification.)

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Q I show you this document marked Defendant's Exhibit D for identification.

Can you tell the Court, Mr. McCarthy, what that document is? It is a document consisting of ah at seven or eight pages.

THE COURT: What is Defendant's C?

MR. MC MAHON: The minutes of the meeting, your Honor. I believe Mr. McCarthy is holding them in his hand.

MR. PHILLIPS: If counsel will indicate what he hopes to prove by that, perhaps I can enter into a stipulation and save time.

MR. MC MAHON: There has been testimony here by Mr. Boland,your Honor, by deposition, that the captain was advised that there was going to be all kinds of protests -

MR. PHILLIPS: What do you intend to prove by this document? That is all I am asking.

MR. MC MAHON: In support of that testimony were minutes of the meeting, they were given to Captain Claybourne --

MR. PHILLIPS: Do you intend to show by that document that Mr. Kraft joined the vessel as of a certain date? If so, I will stipulate to that. That doesn't prove that these were written -- the fact he joined the vessel at a certain date has no relevance to when this was signed by Mr. Boland. If that is what you want --

MR. MC MAHON: I think it is obvious if it is signed by Mr. Kraft and he was not on the vessel on January 21st --

MR. PHILLIPS: Nothing is obvious.

THE COURT: Are you trying to prove that Mr. Kraft joined the vessel on January 21st by that crewlist?

MR. MC MAHON: Yes, your Honor.

MR. PHILLIPS: I will so stipulate.

THE COURT: Mr. Phillips so stipulates.

Q Does Mr. Kraft's signature appear on those minutes?

A It does.

MR. PHILLIPS: Objection. There has been no foundation laid that he is a handwriting expert. The name Kraft appears. That I will stipulate. There is nothing to indicate that he is a handwriting expert and would know signatures.

MR. MC MAHON: This has come into the possession of Texaco in its regular course of business from the National Maritime Union and the delegates on that ship.

THE COURT: And it is signed by somebody named Kraft.

MR. MC MAHON: Who was a delegate on that ship.

MR. PHILLIPS: And Mr. Boland who was a witness at this case.

MR. MC MAHON: And who also testified that these minutes were given to Captain Claybourn before the sign-off.

THE COURT: All right.

Q Based on the fact that Mr. Kraft's signature is contained on these minutes, can you tell the Court when the minutes were prepared?

MR. PHILLIPS: Objection, your Honor.

THE COURT: This is something for the Court to conclude as the tryer of the facts.

MR. MC MAHON: Your Honor, I offered that crewlist, it was marked for identification --

THE COURT: He stipulated to the date he joined the crew. There is no point in putting it in.

Q Mr. McCarthy, can you, from your records tell the Court when the actual physical employment of each crew member, unlicensed crew member, of the Texaco Illinois in fact terminated with Texaco during this -- of the Illinois during this period of time?

MR. PHILLIPS: Your Honor, again, it is conceded that the crew members or practically all of them remained aboard the vessel after the termination of the articles, signed new articles, made a new voyage.

THE COURT: And never left the vessel? They just signed that paper that is Defendant's Exhibit A?

MR. PHILLIPS: Right.

THE COURT: Then signed new coastwise articles?

MR. PHILLIPS: Correct, your Honor. That is not an issue in this case.

MR. MC MAHON: Will that concession include that they stayed aboard the vessel beyond the 30-day period as covered by the original foreign articles?

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MR. PHILLIPS: I have no knowledge as to that.

MR. MC MAHON: That is one of the bases of the argument.

MR. PHILLIPS: If your representation is that they did, I would accept that representation.

THE COURT: Let's proceed.

MR. MC MAHON: I can't make it, your Honor. They all did not. That's why you have to go over each man individually and say when he got on and when he got off.

THE COURT: Do you have a list?

MR. MC MAHON: Yes, I have.

THE COURT: Put that in, to save time.

Q At my request did you prepare a compilation, to aid the Court, to determine when the men signed on, when they left and the reasons for leaving the vessel?

A I did.

Q Is that a copy of the compilation?

A It is.

MR. MC MAHON: Would you mark this for identification and then I would offer it in evidence, your Honor.

(Defendant's Exhibit E was marked for identification.)

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MR. PHILLIPS: I object only to that portion of this document which refers to the reason for leaving,

since that is totally irrelevant to any of the issues in this case, and suggest, if counsel is willing, we simply excise it by cutting it down. If not, I will press my objection.

MR. MC MAHON: Your Honor, we feel that the reasons in certain cases, particularly where the men left within the 30 days, the original 30 days contemplated by the foreign articles, may be relevant.

Certainly, the men left because their permanent crew members came back and they were bumped pursuant to union regulations off the ship, not pursuant to any discharge by Texaco from its employment. Texaco again had no choice in the matter.

THE COURT: They were bumped by the union?

MR. MC MAHON: A relief crew member, like a pump man who is a relief crew member, he is on for 30 days, his relief comes back, it just so happens in a couple of these cases, they are relieved, the permanent crew member came back before th e 30 days'articles were up. We feel that that may be relevant from Texaco's --

THE COURT: How could it be relevant? If these men were out on the Pacific Ocean trying to get to California pursuant to the original foreign articles, you wouldn't have that problem, would we? The union would

not have been able to bump them off, would it, if they were out in the middle of the ocean somewhere pursuant to the original articles?

MR. MC MAHON: That's right.

THE COURT: All of that is irrelevant.

MR. MC MAHON: Your Honor, I would offer it for the reasons as well that --

MR. PHILLIPS: I press my objection.

THE COURT: Objection sustained.

MR. PHILLIPS: I ask that the document be physically cut down since the reasons for leaving are on one side.

THE COURT: Yes. You can mark that separately, mark it E-1.

(Defendant's Exhibit E-1 marked for identification.)

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THE COURT: If these men were bumped by the union, they did not voluntarily leave the ship, did they?

MR. MC MAHON: There is nothing that Texaco had control over, your Honor, and I think that's the main issue in this case.

THE COURT: What I am getting at, it seems to me that is the purpose of this statute, isn't it, to liquidate the damages for any such claim that they

could have had against Texaco for terminating the original foreign articles, that is exactly the purpose of this statute, to liquidate their damage claim, it seems to me. The union men threw them out of their employment, you say.

MR. MC MAHON: This comes back to the problem that when the statute was enacted, there was no union such as this. I think Texaco is being brought to task by the courts of this country for this entire situation, and apparently it is Texaco's obligation to conduct the sign-offs, that they discharge their responsibilities to the Shipping Commissioner to them -- if Texaco had any choice in this, they would have never had these articles in the first place. All they wanted to do is go from Florida to the West Coast, and because it is going through the Canal, the Government is requiring these articles.

THE COURT: Let's go on.

(Defendant's Exhibit E received in evidence.)

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MR. MC MAHON: I don't believe E-1 is irrelevant. I think it goes to the constitutional issues that I have raised in this case.

I have nothing further, your Honor.

THE COURT: Any cross examination?

MR. PHILLIPS: Very few questions, your Honor.

CROSS EXAMINATION

BY MR. PHILLIPS:

Q You heard me read questions and answers which were put to you and answers which you gave under oath on November 21, 1972. Those questions and answers were correct as I read them, is that true?

A Yes, sir.

Q In October of 1967, the articles were opened for the Texaco Georgia. That means that the crew signed on the ship, isn't that correct?

A Correct.

Q Then two days later those articles were closed, isn't that correct? That was your testimony.

A Two days later?

Q Your testimony was they were opened on October 4th and closed on October 6th.

That was the deposition testimony; is that about right?

A All right.

Q When those articles were closed, each seaman got a certificate of discharge from the United States Coast Guard, did they not?

A Right.

Q And that certificate of discharge was for the voyage or the period of that -- those shipping articles; is that correct?

A I didn't see the discharges. What period they covered, I don't know.

Q Had you ever known a discharge to cover a period which did not correspond to the date of commencement and termination of articles?

A No.

Q Then on the advice of the Shipping Commissioner and with the suggestion of the union, you then paid these men 30 days' extra wages; isn't that correct?

A Correct.

Q And that would be in addition to the wages that the men earned during the period of the articles, whether it was two or three days, is that correct?

A Correct.

Q And then the men signed new articles, those that remained aboard, for a new voyage which happened to be coastwise, is that correct?

A Correct.

Q And when that voyage ended, they were paid for that voyage, according to the number of days they worked, whatever that was, is that correct?

A On coastwise?

Q Yes. Whenever they got off the ship or terminated their employment, they received wages, is that correct? For the period that they worked.

A Yes, that is correct.

Q And the wage is not in a unit of 30 days, it depends on how long they happened to work on the ship, whether it be one day, five days, 10, 20 or 50?

A That is correct.

Q I think the Court would like to get a picture of what a sign-off looks like, so let's see if we can do that.

Isn't it true that the Texaco Illinois has a single payoff at one time, and we are talking now about January of 1971?

MR. MC MAHON: Your Honor, I would object to directing any questions as to the sign-off to this witness. He was not present. There is no testimony he was present, and there is also testimony from the Shipping Commissioner here in evidence as to what the sign-off procedure was.

MR. PHILLIPS: I will withdraw that question, your Honor.

Q You testified in your deposition that as part of your duties you have attended at many, many payoffs

before Shipping Commissioners; that is correct, is it not?

A That is correct.

Q So you are familiar with what happens at a payoff; is that correct?

A That is correct.

Q Isn't it true that the Texaco Illinois has approximately 40 crew members at about that time; is that correct?

A Approximately.

Q And all but the master signs off before the Shipping Commissioner; isn't that correct?

A Correct.

Q It is all done in one interval of time; isn't that correct?

A That is correct.

Q And it is done as quickly as possible in order to avoid any interruption with the commercial operation and function of the vessel, isn't that correct?

MR. MC MAHON: Your Honor, I would object to this line of questioning in that there is no testimony that this was done in the Texaco Illinois situation.

In fact the testimony is quite substantial from everybody that perhaps what went on here is quite unusual. I don't see the materiality or relevancy of

these general questions --

MR. PHILLIPS: Not with respect to the Shipping Commissioner. I will withdraw the question.

THE COURT: With respect to what?

MR. PHILLIPS: With respect to what takes place at the physical sign-off. The testimony was there was a delay in the sign-off and then it took place. I want the Court to have a picture of what actually happens at a sign-off.

MR. MC MAHON: Your Honor, that's just my point. Apparently what happened on this sign-off is not a very accurate picture of what happens in other sign-offs. On materiality and relevance --

MR. PHILLIPS: According to the Shipping Commissioner, nothing unusual took place at this sign-off.

THE COURT: Overruled.

Q Isn't it true that all of the crew members line up one behind the other in the presence of the Shipping Commissioner and the paymaster alongside him, isn't that true?

A If there is no problem, that is correct.

Q And they go one after the other, they lean over, they sign the shipping articles, and then go on to the next place to get their money, isn't that correct?

A Correct.

MR. PHILLIPS: That is all.

MR. MC MAHON: I object to this continuing line of questioning. I don't see the materiality or relevancy of it. I move to strike it. I thought counsel was heading for something. He stopped. Apparently they just didn't line up in this case. I think the testimony indicates that.

Certain men were in the room and certain men outside heard about protests going on, and everything else. I don't see how this line of questioning applies to the Illinois situation.

THE COURT: How does it apply?

MR. PHILLIPS: I don't see any reason to repeat the testimony, and that is why I did not do so. There was testimony from the Shipping Commissioner that this was a normal sign-off, even though it was delayed, that it was a normal sign-off. There was testimony from Mr. Boland that he was present during the entire sign-off. There was testimony that nothing was read to the crew members from the articles. I wanted the Court --

THE COURT: We could ask him that. Are the articles usually read to the seamen? Do they have a chance to read it?

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MR. PHILLIPS: He already testified in his deposition it was never done. I didn't want to repeat that. I just wanted the Court to have a picture of a group of 30 to 40 people in line walking right by, signing one thing, getting their money and walking out.

We have the testimony that nothing was read to them.

MR. MC MAHON: He hasn't testified that it wasn't done. He wasn't there. He doesn't know.

THE COURT: We are talking about what is normally done, is that correct?

MR. PHILLIPS: That is correct, your Honor.

THE COURT: On these sign-offs, does the Commissioner usually require the seamen to read those articles before he signs his name?

THE WITNESS: No, your Honor. It has been my experience that if the man has got any questions, then he will ask the Commissioner, and then it goes on that way. If there is any particular problem, it is handled between myself -- a grievance between myself or somebody in my office and the union representative, and we will either notify the Commissioner that we are not going to sign off until such time that our problem is resolved, in which case we will dismiss him, or something of that

kind.

But generally speaking, I don't know of too many instances where the crew members will ask a Commissioner about something in the articles or where he will volunteer.

BY MR. PHILLIPS:

Q The question that you had in your mind when you learned of the termination of this voyage was about the 30-day pay, was it not?

A To be perfectly honest, I can't answer that yes or no, because of the fact that I wasn't sure of what my problem was going to be. I had been snakepit --

Q When you say you had been burned before, you were referring to the Texaco Georgia?

A Exactly.

Q That involved 30 days' pay, did it not?

A Yes.

Q Didn't that enter your mind at the time?

A Sure. It still did.

MR. PHILLIPS: That is all I have.

THE COURT: Wait a minute. Did I misundstand your testimony? I thought you testified before that you called the union representative and asked about this matter in view of the Georgia matter to see what they had to say, that is relating to the 30-day pay. Isn't that

what you testified to?

THE WITNESS: Yes, ma'am. Because of the fact that it was still fresh in my memory, although it was a few years earlier, I didn't want something like that happening at the last minute on the Illinois.

MR. PHILLIPS: I have nothing further.

MR. MC MAHON: May I have a short redirect?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. MC MAHON:

Q You were asked about procedure on sign-off, Mr. McCarthy, based upon your experience.

May I ask you this:

From your experience based upon -- from your prior experiences on these articles, are you aware if the union has a practice when the articles are opened to review them before they permit their members to sign them?

A Absolutely.

Q And they review them in detail?

A I would assume.

MR. PHILLIPS: I move to strike the last answer.

THE COURT: Let me hear the question and answer.

(Record read.)

THE COURT: Your motion to strike goes to

what they did?

MR. PHILLIPS: Any assumption on his part as to what the union did.

THE COURT: The objection is sustained.

Stricken.

Q You were also asked by Mr. Phillips on cross examination if you had read the questions and answers in your deposition and were they correct; is that right, Mr. McCarthy?

A Yes.

Q In your deposition there was a question put to you wherein it was stated that the Shipping Commissioner -- you were asked whether the Shipping Commissioner is not involved with the settlement of grievances, isn't that correct, and you answered that is correct.

What grievance did you refer to when you made that answer?

Deposition page 9, line22:

(Record read.)

What type of grievance did you refer to when you made that answer?

A Contractual grievances between the National Maritime Union and Texaco would never be referred to the Shipping Commissioner.

Q Grievances as to pay and the like, are they the type of grievances that would be referred to Shipping Commissioners?

A You mean overtime pay?

Q The right of a seaman to his earnings, how much he earned.

A That could be referred to a Commissioner.

Q That is one of the reasons the Commissioner is present aboard the ship?

A Yes. That's what they tell me.

Q Incidentally, the Commissioners aboard the ship, he is not a representative of Texaco, is that correct?

A No.

Q He is a representative of the United States Government?

A Correct.

MR. MC MAHON: That is all.

THE COURT: You may step down.

(Witness excused.)

THE COURT: We will take a recess in this case.

MR. MC MAHON: Your Honor, I intend to rest at this point.

(Recess.)

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MR. McMAHON: Your Honor, at this time the defendant rests and renews its motions made at the close of the plaintiffs' case and again moves to dismiss the complaint against it based on the grounds that on all the testimony and all the credible proof there is no liability upon Texaco in this action.

We feel strongly, as I said before, that the Shipping Commissioner was there serving a very definite purpose. There is a huge union organizawtion behind these men, and to impose upon Texaco the responsibility with regard to releases and waivers that the Court has suggested earlier should not --

THE COURT: I don't know what you are talking about, that I suggested to impose upon Texaco the responsibilitity for releases and waivers?

MR. McMAHON: The securing of --

THE COURT. Let's talk to the issues that were tried here as outlined in Judge MacMahon's memorandum opinion on a motion for summary judgment; first, whether the plaintiff consented to a termination of the voyage, and, two, whether they waived their rights under the statute.

Do you want to address yourself to those two questions?

MR. McMAHON: Yes, your Honor. It is our

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position that they did consent, there is voluminous testimony as I pointed out earlier that they had discussions, they knew their rights under this section, and the fact that they signed off the articles and the release was on mutual consent--it is stated right in the articles, written by the Shipping Commissioner, it is a mutual consent sign off, and also the release releases them of all rights against Texcaco, and the release is prima facie valid, again, as we take the position, in the absence of fraud and coercion.

I don't see how in heaven's name in this case, with union officials and the Federal Government officials aboard this ship, there can be any legitimate claim of fraud or coercion upon Texaco.

I also take the position that by continuing in the employment of Texaco, Inc., these men waived any right they may have had, any further right they may have had for benefits under the statute, and, of course, the fact again that they may not have been aware of what they were doing I do not think is relevant to the issues, in light of the fact that this was a release taken by a United States Commissioner and not by Texaco.

I further believe strongly as I raised the issue of constitutionality of this section, to impose it against Texaco in this situation as a remedy for liquidated damages,

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it would be unconstitutional because there are in fact no damages in this case whatsoever except for a few men who left the vessel -- in all the cases none of them were fired - well, there was one, for drinking, but all the other men who left the vessel, there are only three or four, perhaps, that were of their own choosing or due to their union regulations, which, as your Honor already pointed out, you will not accept the fact that union regulations should have any bearing on the matter. But, of course, we think it should. Those are the bases for my motion, your Honor.

THE COURT: Did all the men continue in the employ, that is did they all sign on for the coastwise voyage?

MR. McMAHON: All but one.

THE COURT: Which one was that?

MR. McMAHON: Mr. Kardas, a plaintiff. He left on January 22, at Loop. The day after the articles were signed off.

THE COURT: Everyone else signed for a coastwise voyage up the Eastern Coast?

MR. McMAHON: That's right, your Honor. Not everyone else.

THE COURT: How many of them stayed for that voyage? How long did that voyage take?

MR. PHILLIPS: Your Honor, the testimony is that

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when a vessel goes on coastwise, there is no definable voyage, as such. They stay until such time as they get off, but they are what the witness described as master's articles as distinguished from shipping articles under the jurisdiction of the United States Coast Guard.

THE COURT: I understand. I was just trying to get at this Exhibit E that was let in.

Does that show when they got off?

MR. McMAHON: Yes, your Honor, and where they got off. Tow of them got off in the middle of the coastwise voyage v in Baltimore. Three got off before they ever -- well, after the sign off. None of them got off on the signoff, not one.

THE COURT: You said one got off --

MR. McMAHON: The day after, your Honor. Two got off the day after.

THE COURT: And never signed on to the coastwise voyage; is that right?

MR. McMAHON: I don't believe they did.

THE COURT: He didn't, one. You are talking about one person?

MR. McMAHON: Two. Jacquet got off on January 22 because his permanent crew member came back.

Kardas got off on January 22 at Loop, due to

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termination of articles on here.

MR. PHILLIPS: Your Honor, the reasons for their getting off are not in this case.

THE COURT: I was just trying to get some idea of how many got off.

MR. McMAHON: I think there are five all together.

THE COURT: How many did not go on? Now you tell me there are five who did not go on?

MR. McMAHON: No, there are three that did not go on. Two got off in the middle of the coastwise voyage.

THE COURT: All right.

You say they waived their claim by accepting that coastwise voyage, is that it?

MR. McMAHON: And continuing --

THE COURT: Three, anyway, did not accept it, isn't that so? So that as to at least three of them, they did not waive their rights, according to your theory?

MR. McMAHON: That's right. However, they did sign the Coast Guard release without protest.

THE COURT: That meant they consented, is that it, to termination?

MR. McMAHON: That was done on mutual consent. The Coast Guard Commissioner wrote mutual consent into the cause column, on the cause sheet under the articles.

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There is no protest. Of course, even the ones that got off right after we claim are not entitled to recover because of the release problem, your Honor, and the mutual consent under the articles.

We also, of course, claim that as to the others it is constitutionally prohibitive to award them damages when they have not in fact been damaged whatsoever.

THE COURT: Do you want to reply to this motion?

MR. PHILLIPS: If the Court deems or wishes a reply.

THE COURT: Yes.

MR. PHILLIPS: Yes, your Honor.

THE COURT: How do you say that the plaintiffs did not consent to termination of the voyage and how do you say they did not waive their rights under the statute by accepting or continuing employment with the same company?

MR. PHILLIPS: To begin with, I think the evidence is clearly overwhelming that there was no express consent at any time to a waiver of rights under 46 USC 594. We have the testimony of Chladek, he never consented. We have the testimony of Boland who spoke not only for himself but for every other crew member who was informed personally by him of this. We have the testimony of the captain that he never asked for their consent. We have the testimony

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of the Shipping Commissioner that he never informed them that they were giving up any rights.

THE COURT: Let's not discuss two things at the same time. Let us discuss consent to termination of the voyage in one breadth and waiver by accepting or continuing employment in the next.

MR. PHILLIPS: The testimony of the master was explicit and binding on the company that he never requested or obtained the consent of any crew member to the termination of the voyage. The testimony of Mr. McCarthy was explicit that the voyage was terminated unilaterally by the company, with no reference whatsoever to a request for the consent of the seamen. I think that that is clear and undisputed.

2

THE COURT: What about waiver?

MR. PHILLIPS: The cases which I have cited in my principal memorandum, Newton versus Gulf Oil Company, Third, Circutit, and the subsequent cases thereto, wherein the facts were in all respects identical to this case in that in those cases the seamen had article terminated without their consent and without any fault on their part, and they remained in the employ of the vessel, in each case it was held that the fact of their remaining in the employ of the vessel, which was vigorously argued, of course, was

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irrelevant, that there was a brach of the statute for which the Supreme Court has stated that there is a liquidated damage remedy.

What we must never lose sight of, your Honor, is the fact that each voyage for which articles are open and terminated is a distinct and separate unit.

THE COURT: When did you submit that memorandum? Was that in connection with [illegible] claim of unconstitutional --

MR. PHILLIPS: The principal memorandum submitted in support of the motion for summary judgment. I would also point out on the question of releases that I have cited innumerable cases in my memorandum, the same memorandum, but I particularly call the Court's attention to --

THE COURT: What is the date of that Third Circuit case, the Newton case?

MR. PHILLIPS: Newton versus Gulf Oil, 189 Fed. 2d, 491 at 493, Third Circuit, 1950, certiorari denied 340 U.S. 814.

THE COURT: The date?

MR. PHILLIPS: 1950. The most recent citation on that very issue is Lunquist SS Seatrain versus Maryland, a District Court decision dated June 8, 197-, where the seamen remained in the employ of the vessel and the Court

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held that seamen did not waive their claims under the statute to one month's wages by accepting new employment with the same employer.

This is a case which was litigated while the action before your Honor was pending, so that is still valid law.

THE COUFT: What do you say about those cases, Mr. McMahon?

MR. McMAHON: Your Honor, we come down to a question of the knowledge of these -- if we come down to a question of the knowledge of the seamen, as to both release and waiver and the state of mind, I would like to draw your Honor's attention to this testimony. There is testimony from these plaintiffs that they knew of their rights. There is further testimony that they protested and they knew they had to protest, to both the captain and the Shipping Commissioner. Mr. Boland clearly stated that. Mr. Mauricio stated he told Boland to do it and all the other members to do it, to the Shipping Commissioner.

The only impartial witness in this case, your Honor, when it comes down to that, is the United States Shipping Commissioner. He is neither a representative of the union plaintiffs nor a representative of Texaco. He clearly states that there was no protest made.

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All these men knew of their rights, they knew they should have pro ested and railed to protest.

In the Newton case, I believe in a footnote, they set out the fact that there was a clear and concise protest on the shipping articles, and I think they cite the protest right in the -- the actual protest right in the footnote.

The testimony here of Mr. Ball, the Assistant Shipping Commissioner, is to the effect that no protest was made, and if there was one made even on this subject matter, he would have set it out, and he told the Court in his deposition how he would have set it out.

I think that it cannot be expected of Texaco to sit down and depose these men and have these men admit that they knew what they were doing, it is not in the cards, so to speak, your Honor --

THE COURT: It seems to me we may be running two things together. The first question is whether the men consented --

MR. McMAHON: That is clear.

THE COURT: Just a minute. It is an entirely different question as to whether they protested. Under the statute it appears that they are barred, if they consented to the termination of the voyage, not if they failed

to enter a formal protest when they signed off.

MR. McMAHON: Your Honor, the mutual consent stands on the release, it stands on the face of the discharge sheet of the release, under "Cause." These men signed on those lines. There is no release above that.

I don't know under the cause column what more I can say about that. Of course, if they see they are going to lose money, they are not going to admit that they signed off, butthe fact is they signed off under mutual consent.

THE COURT: Let me ask you this. Do you have any reason to suggest why these men would have given up 30 days wages if they knew about it? Can you suggest any reason why they would do that?

MR. McMAHON: No, your Honor, I cannot.

THE COURT: That is the point. They did not know about it. There may very well have been testimony here by some union officials that they talked about it, and all that kind of thing, but, as you pointed out, that is highly questionable. What appears is that these men signed these articles not knowing anything about their rights and later somebody said, "Aha, you are entitled to 30 days wages under this law."

As I pointed out to you, that piece of paper which you keep waving at me, Defendant's Exhibit A, does

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no t say anything to anybody about that requirement of law. It gives them a whole lot of legal requirements with respect to shipping articles, but it fails to mention that one. So it did not occur to the Commissioner to tell them, "Look, you may have some rights under the Federal law because this is prematurely terminated."

Their union official was not a lawyer on the spot to tell them, "Look, under the law you have a right to liquidated damages." So for you to suggest that they knew what they were doing when they signed that and waived this right is utter nonsense. There is no basis for me to conclude that these seamen knew of their rights. I don't know how you can waive something that you don't know about. If you can explain that to me, I will be glad to listen.

The facts appear to me to be that these seamen signed on this vessel on or about January 6, 1971, signed foreign shipping articles. Without their consent, the owner of the vessel, the defendant here, terminated that, and for the reason that Mr. McCarthy said. They suddenly decided that they did not need to make that trip to South America to pick up that vessel, and no consent of the seamen was requested.

There is no proof that the captain said, "Do you

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agree to terminated this?" When they got off the vessel, there is no evidence that anybody told them what their rights rights were.

This Commissioner which you say had the duty of requiring their signature and going into any matter that they might have, there is no proof that he told them that they had this right. There is therefore no proof that they waived any right.

If there was something written on there, you could say they should have read that before they signed it and knew that they were waiving their rights under this particular statute, but you yourself point out that there is nothing on there -- I pointed it out to you, rather, that there is nothing on there about this subject matter at all. So that is what happened here.

The Court finds that the plaintiffs did not consent to the termination of the voyage, they knew nothing of their rights, contrary to the testimony of these union officials, and they did not waive their rights by continuing or accepting this coastwise voyage.

As far as the statute is concerned, your claim of constitutionality, as I see it, is wholly without merit. This is a liquidation of damages statute to take care of precisely the situation like this, where without the

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consent of the seamen a voyage is terminated. Under the statute to liquidate any damage claim that they might have, the law provides that they are entitled to 30 days. That is not minus any wages that they have already received. That is what they are entitled to under that statute.

I will say this, that the Court is required, since it is a non-jury case, to write out its findings of fact and conclusions of law. If you file a notice of appeal and docket your appeal, I will write that out. But right now my findings are on the record as I have indicated, that the plaintiffs did not consent to termination of the voyage, there is no proof of that, nobody got their approval to the termination.

When they got off, the Texaco Company could just as easily have sent somebody over there to have them sign such a consent or make sure they were advised of their rights and therefore consented, and that they did not waive any right by continuing or accepting employment.

The Court finds, despite the testimony that they did not know their rights, that this occurred to somebody after they got off of there, and they cannot waive any right that they do not know about. That is all, gentlemen.

You notify me if you take an appeal.

MR. PHILLIPS: Your Honor, there is a question

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of counsel fees which was reserved, there is the question of interest and what date the interest should run from, and there is also the open question of whether the delay in payment was arbitrary and unreasonable, and, if so, whether the statute 46 USC 596 would be applicable.

May I ask leave to submit proposed findings and conclusions?

THE COURT: With respect to that second question, whether the Texaco Company is libel under 596, you may both submit something on that.

With respect to counsel fees, you can submit a proposed statement to the Court as to what your fee ought to be.

What is the other question?

MR. PHILLIPS: Interest, and when it should run from.

THE COURT: You can submit something with respect to whether interest runs from the day of judgment or some other time. Is there some statutory provision on that?

MR. PHILLIPS: No, but there is authority.

MR. McMAHON: It is discretionary in admiralty, your Honor.

MR. PHILLIPS: It is always discretionary with the Court.

THE COURT: The date from which it will run?

MR. PHILLIPS: Yes. I would suggest it should run from January 21, 1971 and I would suggest 6 per cent per annum --

THE COURT: Do you have a case for that?

MR. PHILLIPS: Yes, Lunquisst --

THE COURT: Submit something on that, the interest issue, the counsel fees and the second issue which you claim.

Is that one of the things in the pretrial order that we are trying?

MR. PHILLIPS: Yes.

THE COURT: As to whether they were libel under 496?

MR. PHILLIPS: Yes, your Honor. Issue No. 4.

THE COURT: Actually we haven't discussed that in this motion anyway.

MR. PHILLIPS: That's correct.

MR. McMAHON: I believe counsel will concede that there is no case whatsoever on two for one wages.

MR. PHILLIPS: I haven't made any such concession. I cited to the Court the case of Venidas versus United Greek Shipowners, 168 Fed. 2d 681, Second Circuit, 1948. I believe I went into that at some lenth, your Honor.

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In that case, if you will recall, this was a suit under 46 --

THE COURT: Let us settle it this way. You submit a memorandum and they will have a chance to look up the law on that. Submit on that question also.

MR. PHILLIPS: I would require a finding of fact as to whether in light of the episode with the Texaco George --

THE COURT: I will make that finding after I have read your memorandum on it.

MR. McMAHON: Your Honor, may I have my ten days to make the motions pursuant to the Federal rules?

THE COURT: Yes, you may, and you can do that after I finally rule on all these matters. Ten days after that, You will have until November 15 at 5 o'clock to submit a memorandum of law on these three questions that we have just gone over. 596, the interest matter and counsel fees. Then I will make a final ruling on that.

MR. McMAHON: Your Honor, at that time your Honor wishes to be advised whether an appeal will be taken so your Honor can proceed with findings and conclusions?

THE COURT: Yes, and I can make out the rest of it also.

(Court adjourned.)

DEFENDANT'S EXHIBIT A

SHIPPING ARTICLES

[For convenience of Court and Counsel this Exhibit is bound in on the opposite page.]

C. G. 705A

OFF 35

1/21/71 WMP

I hereby certify that this is a true copy of the original shipping articles as delivered to the Master on 6 JAN 71. Given under my hand and seal at Port Everglades, Florida.

JAMES C. [illegible]
Deputy Shipping Commissioner

TREASURY DEPARTMENT
UNITED STATES COAST GUARD
SHIPPING ARTICLES

(R. S. 4612, as amended—U. S. C., title 46, sec. 713)

Notice is hereby given that section 4510 of the U. S. Revised Statutes (U. S. C., title 46, sec. 577) makes it obligatory on the part of the master of a merchant vessel of the United States, at the commencement of every voyage or engagement, to cause a legible copy of the agreement (forecastle card), omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew, under a penalty not exceeding ONE HUNDRED DOLLARS.

ARTICLES OF AGREEMENT BETWEEN MASTER AND SEAMEN IN THE MERCHANT SERVICE OF THE UNITED STATES

Required by act of Congress, title LIII, Revised Statutes of the United States (U. S. C., title 46, ch. 18)

Name of Ship	Official No.	Port of Registry	Date of Register	Registered Tonnage		Voyage No.
				Gross	Net	
SS TEXACO ILLINOIS	246993	Wilmington, Del.	19 DECEMBER 70	14,324	10,003	171

Operating Company on This Voyage		Number of Seamen and Apprentices for Which Accommodation is Certified	Class of Ship
Name	Address (State number of house, street, and town)		
TEXACO, Inc.	135 East 42nd St., New York, N.Y.	45	Steam/Tanker

Office of the U. S. SHIPPING COMMISSIONER FOR THE PORT OF Miami, Florida 6 January, 19 71

IT IS AGREED between the Master and seamen, or mariners, of the SS TEXACO ILLINOIS

of which Verner CLAYBOURN, Lic. 365364, MD #300056-D1

is at present Master, or whoever shall go for Master, now bound from the Port of Port Everglades, Florida, *to*

One or more ports in the Gulf and/or Caribb. n and Panama and thence to one or more ports on the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not exceeding ninety (90) days.

~~and such other ports in any part of the world as the Master may direct; and that such port or ports of discharge within the United States, for a term not exceeding~~

~~xxxx

IN WITNESS WHEREOF the said parties have subscribed their names hereto on the days against their respective signatures mentioned.

NOK: Reba May - Wife
c/o Texaco, Inc.
135 East 42nd Street
New York, N. Y.

Verner CLAYBOURN, Lic. 365364, Master, of

on the 6th day of January, 19 71

USCG 525-1R-9226

The authority of the owner or agent for the allotments mentioned in these articles is in my possession.

The Shipping Commissioner or Consular Officer will sign if such authority has been produced and will strike out in ink if it has not.

for [illegible]

Shipping Commissioner

CITIZENSHIP REQUIREMENTS (crew exclusive of licensed officers)

	Atlantic Foreign Vessels	Pacific Coast Vessels	Nonsteamship Vessels
	[illegible]	[illegible]	On and after Jan. 1, 1938, not less than 75 per cent must be citizens of the United States or have declared their intention to become such
	Number	Number	Number
Native-born citizens			26
Naturalized citizens			7
First papers			
Admissible aliens			4
Percentage (American citizens)	%	%	88 %

I HEREBY CERTIFY that the above statement as to the citizenship of the crew signed on these articles is true and correct.

[illegible]
U. S. Shipping Commissioner.

* Here the voyage is to be described, and the places declared at which the ship is to touch or if that should be doubtful, the general nature and probable length of the voyage is to be stated, and the port at which the voyage is to terminate.

† See sec. 8, 9, prohibiting the shipping of aliens borne on shipboard, and requires that the Master insert the date of the law.

‡ Here any other stipulations may be inserted to which the parties agree, and which are not contrary to law.

If more men are engaged during the voyage than the number for whom signatures are provided in this form, an additional form should be obtained and used.

Any Erasure, Interlineation, or Alteration in this Agreement will be void, unless attested by a Shipping Commissioner, Consul General, Consul, or Consular Agent, to be made with the consent of the persons interested.

ATTENTION OF MASTERS ESPECIALLY INVITED TO THE FOLLOWING REQUIREMENTS OF LAW

Agreement To Ship in Foreign Trade

(R. S. 4511—46 U. S. C. 564) The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or the Republic of Mexico, or of any vessel of the burden of seventy-five tons, or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, shall, before he proceeds on such voyage, make an agreement, in writing, or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned.

(R. S. 4519—46 U. S. C. 577) The master shall, at the commencement of every voyage or engagement, cause a legible copy of the agreement, omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew, and on default shall be liable to a penalty of not more than $100.

Penalty for Shipment Without Agreement

(R. S. 4514—46 U. S. C. 567) If any person shall be carried to sea, as one of the crew on board of any vessel making a voyage as hereinbefore specified (R. S. 4511) without entering into an agreement with the master of such vessel, in the form and manner, and at the place and times in such cases required, the vessel shall be held liable for each such offense to a penalty of not more than $200. But the vessel shall not be held liable for any person carried to sea, who shall have secretly stowed away himself without the knowledge of the master, mate, or of any of the officers of the vessel, or who shall have falsely personated himself to the master, mate, or officers of the vessel, for the purpose of being carried to sea.

Shipment in Foreign Ports Before Consuls

(R. S. 4517—46 U. S. C. 570) Every master of a merchant vessel who engages any seaman at a place out of the United States, in which there is a consular officer, shall, before carrying such seaman to sea, procure the sanction of such officer and shall engage seamen in his presence, and the rules governing the engagement of seamen before a shipping commissioner in the United States shall apply to such engagements made before a consular officer, and upon every such engagement the consular officer shall endorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence and otherwise duly made.

(R. S. 4518—46 U. S. C. 571) Every master who engages any seaman in any place in which there is a consular officer otherwise than as required by the preceding section shall incur a penalty of not more than $100, for which penalty the vessel shall be held liable.

Shipment of Seamen in the Coasting or Nearby Foreign Trade

(June 19, 1886—Sec. 2—46 U. S. C. 646) Shipping commissioners may ship and discharge crews for any vessel engaged in the coasting trade, or the trade between the United States and the Dominion of Canada, or Newfoundland, or the West Indies, or the Republic of Mexico, at the request of the master or owner of such vessel.

Watches—Hours of Labor—Legal Holidays

(R. S. 4131—Sec. 2—46 U. S. C., Supp. IV 673) In all merchant vessels of the United States of more than one hundred tons gross, excepting those navigating rivers, harbors, lakes (other than Great Lakes), bays, sounds, bayous, and canals exclusively, the licensed officers and sailors, coal passers, firemen, oilers, and water tenders shall, while at sea, be divided into at least three watches, which shall be kept on duty successively for the performance of ordinary work incident to the sailing and management of the vessel. No licensed officer or seaman in the deck or engine department of any tug documented under the laws of the United States (except boats or vessels used exclusively for towing purposes) navigating the Great Lakes, harbors of the Great Lakes, and connecting and tributary waters as far east (but not including Ogdensburg, N. Y.) as Port Huron, Mich., Niagara Falls, N. Y.; and Ogdensburg, N. Y., shall be required or permitted to work more than eight hours in one day except in case of extraordinary emergency affecting the safety of the vessel and of life or property. The seamen shall not be shipped to work alternately in the firerooms and on deck, nor shall those shipped for deck duty be required to work in the firerooms, or vice versa, nor shall any licensed officer or seaman in the deck or engine department be required to work more than eight hours in one day; but these provisions shall not impair either the authority of the master or other officer or the obedience of the seamen when in the judgment of the master or other officer the whole or any part of the crew are needed for maneuvering, shifting berth, mooring, or unmooring the vessel or the performance of work necessary for the safety of the vessel, her passengers, crew, and cargo, or for the saving of life aboard other vessels in jeopardy, or when in port or at sea, from requiring the whole or any part of the crew to participate in the performance of fire, lifeboat, or other drills. While such vessel is in a safe harbor no seaman shall be required to do any unnecessary work on Sundays or the following named days: New Year's Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, but this shall not prevent the dispatch of a vessel on regular schedule or when ready to proceed on her voyage. And at all times while such vessel is in a safe harbor, eight hours, inclusive of the anchor watch, shall constitute a day's work. Whenever the master of any such vessel shall fail to comply with this section and the regulation issued thereunder, the owner shall be liable to a penalty not to exceed $500, and the seamen shall be entitled to discharge from such vessel and to receive the wages earned. But this section shall not apply to vessels engaged in salvage operations: *Provided*, That in all cases and barges, subject to the section when engaged on a voyage of less than six hundred miles, the licensed officers and the rulers of crews other than coal passers, firemen, oilers, and water tenders may, while at sea, be divided into not more than two watches: but nothing in this proviso shall be construed as repealing any part of section 222 of the [illegible]. This section shall take effect six months after June 25, 1936. (As amended June 25, 1936, c. 816, 2, 49 Stat. 1933, June 23, 1938, c. 597, 52 Stat. 946.)

Wages

(R. S. 4532—46 U. S. C. 644) The following rules shall be observed with respect to the settlement of wages:

First. Upon the completion, before a shipping commissioner, of any discharge and settlement, the master or owner and each seaman respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seaman assent to such settlement, or the settlement has been adjusted by the shipping commissioner.

(R. S. 4524—46 U. S. C. 591) A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

(R. S. 4530—46 U. S. C. 597) Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void. *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with the demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4525 of the Revised Statutes. *Provided further*, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes, any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require.

Discharge in Foreign Trade

(R. S. 4549—46 U. S. C. 641) All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port, or, being of the burden of seventy-five tons or upward, from a port on the Atlantic to a port on the Pacific, or vice versa, shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner under this Title (R. S. 4501–4612), except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seaman belonging thereto or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than $50.

(R. S. 4551—Subsec. (d)—46 U. S. C., Supp. IV 643 (d)) Upon the discharge of any seaman and the payment of his wages, the shipping commissioner shall enter in the continuous discharge book of such seaman, if the seaman carries such a book, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, the rating (capacity in which employed) then held by such seaman, and the signature of the person making such entries and nothing more.

(R. S. 4551—Subsec. (e)—46 U. S. C., Supp. IV 643 (e)) For the purpose of furnishing evidence of sea service in the case of seamen preferring the certificate of identification instead of the continuous discharge book, the United States Coast Guard shall provide a certificate of discharge, printed on durable paper, in such form as to specify the name and citizenship of the seaman to whom it is issued, the serial number of his certificate of identification, the name and official number of the vessel, the nature of the voyage (foreign, intercoastal, or coastwise), the class to which the vessel belongs (steam, motor, sail, or barge), the date and place of the shipment and of the discharge of such seaman, and the rating (capacity in which employed) then held by such seaman. Records of service entered in either continuous discharge books or certificates of discharge shall contain no reference to the character or ability of the seaman. The shipping commissioner shall issue such certificate of discharge and make the proper entries therein, which certificate shall be signed by the seaman to whom it is issued and the master of the vessel and shall be witnessed by such shipping commissioner.

(R. S. 4551—Subsec. (k)—46 U. S. C., Supp. IV 643 (k)) Where vessels are required to sign on and discharge the crew before a shipping commissioner and no shipping commissioner is appointed or is available the functions and duties required by subsections (d) and (e) of this section to be performed by such shipping commissioner may be performed by a collector or deputy collector of customs, and where vessels are not required to sign on and discharge the crew before a shipping commissioner the duties and functions required by subsections (d) and (g) of this section to be performed by the shipping commissioner shall be performed by the master of such vessel. Any master who shall fail to perform such duties or functions shall be fined in the sum of $50 for each offense.

Discharge in Foreign Ports

(R. S. 4580—46 U. S. C. 682) Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of any seaman for his own discharge, if it appears to such officer that said seaman has completed his shipping agreement or is entitled to be discharged under any act of Congress or according to the general principles or usages of maritime law as recognized in the United States, such officer shall discharge said seaman, and require from the master of said vessel, before such discharge shall be made, payment of the wages which may then be due said seaman, but no payment of extra wages shall be required by any such consular officer upon such discharge of any seaman except as provided in this act.

Arbitration Before Shipping Commissioner

(R. S. 4554—46 U. S. C. 651) Every shipping commissioner shall hear and decide any question whatsoever between a master, consignee, agent, or owner, and any of his crew, which both parties agree in writing to submit to him; and every award so made by him shall be binding on both parties, and shall, in any legal proceedings which may be taken in the matter, before any court of justice, be deemed to be conclusive as to the rights of the parties. And any document under the hand and official seal of a commissioner purporting to be such submission or award shall be prima facie evidence thereof.

U. S. GOVERNMENT PRINTING OFFICE 16—80187-1

SS
TEXACO ILLINOIS
OFFICIAL NO.
246993
OF
Wilmington, Delaware
MASTER
Verner Claybourn
BOUND FOR
Louisiana

DEPARTMENT OF STATE
FOREIGN SERVICE OF THE UNITED STATES OF AMERICA

SEAMAN ACTION CERTIFICATE

PLACE
American Embassy
Port of Spain
Trinidad, W.I.
DATE Jan. 13, 1971
JOURNAL NO.

SHIPMENT

I, the undersigned, hereby certify that on the dates indicated the seamen hereinafter named have been duly shipped upon the terms and conditions set opposite their names, respectively, and I further certify that they appeared before me, and that they signed the attached agreement in the manner provided by law (U. S. C. title 46, secs. 569 and 570), and in all respects complied with the requirements of law, each for himself acknowledging that he had read or had heard read the said agreement and understood the same, and that while sober and not in a state of intoxication he signed it freely and voluntarily for the ___ and purposes therein mentioned.

DATE	NAME AND BOOK OR "Z" NO. (Port where shipped if not this port)	STATION	AGE	NATIONALITY	Wages Per Month	Date Wages Commenced	ALLOTMENT WAGES	NEXT OF KIN—NAME AND ADDRESS

Given under my hand and seal of office _____ 19___ Closed with _____ name(s)

SEAL

_____ of the United States of America

DISCHARGE

I, the undersigned, do hereby certify that the undernamed seamen have been duly discharged at this port from the above-mentioned vessel, the master having deposited the wages, basic and extra, as hereinafter set opposite their names, respectively.:

DATE	NAME AND BOOK OR "Z" NO.	AMOUNT COLLECTED				AMOUNT BY				REASON FOR DISCHARGE
		WAGES		EXTRA WAGES		VOUCHER		CASH		

Given under my hand and seal of office _____ 19___ Closed with _____ name(s)

SEAL

_____ of the United States of America

OATH AND DECLARATION OF MASTER AS TO FAILURE OF SEAMEN TO JOIN SHIP, HOSPITALIZATION OF SEAMEN WITHOUT DISCHARGE, OR SEPARATION OF SEAMEN UNDER OTHER CIRCUMSTANCES

I, the master of the above-mentioned vessel, now in this port, do hereby make oath, in due form of law, that the seamen hereinafter named were separated from this vessel at the ports and on the dates hereinafter stated for the reasons indicated opposite their respective names, and further that all failures to join were without my knowledge or consent, and that, if hospitalized, seamen were not discharged before a shipping commissioner or consular officer for good and sufficient reasons given below.

NAME AND BOOK OR "Z" NO.	PLACE AND DATE OF SEPARATION	WAGES DUE AND DISPOSITION	REASON SEAMEN SEPARATED FROM VESSEL AND REASON NOT DISCHARGED
Gerald L. Dubon, Z1207372	Port Everglades, Fla. Jan. 6, 1971	$123.48 paid to seaman	Medical

Closed with CBE name(s)

I, the undersigned, hereby certify that the foregoing oath and declaration of master in the separation of the above-named seamen from the vessel in United States and for the reasons stated above, was executed before me on Jan. 13, 19 71

SEAL

Master

Luby M. Miles
Vice Consul of the United States of America

FORM FS-663
8-69

C. G. 705 A
(Rev. Dec.)

SHIPPING ARTICLES OF S/S Texaco Illinois ..... PAGE No. .....

PARTICULARS OF ENGAGEMENT

	SIGNATURE OF SEAMAN	CAPACITY	WAGES PER MONTH	NUMBER OF CERT. DIS. BOOK OR CERT. OF ID'N OR MERCHANT MARINER'S DOCUMENT	SERIAL NUMBER OF LICENSE OR CERTIFICATE	BIRTHPLACE (If foreign-born, but naturalized, insert NAT. in parenthesis after country of birth)	DATE OF BIRTH	SOCIAL SECURITY No.	PLACE AND DATE OF SIGNING THIS AGREEMENT: Place	Date	TIME AT WHICH TO BE ON BOARD 1971	MONTHLY ALLOTMENT: Amount	Payable to—	ADDRESS OF WIFE OR NEXT OF KIN	SHIPPING COMMISSIONER'S SIGNATURE OR INITIALS
1	----------NOT USED----------				----------LINE NOT USED----------										
2	Shirley A Cooper	Ch Mate	See Rider	E 570430	395277 LA		8/24/13	460 10 2006	Port Fla. 1-6 Everglades 71		1/6	Void	Void	W/ Iva 924 31st St Nederland, TX	
3	John C Martin	2nd Mate	"	E 105 0713	376029 Ark		12/13 11	571 46 7912						W/ Avis Rt 2 Box 807 Silsbee, TX	
4	Bruce H Doughty	3rd Mate	"	E 112 2294	376255 ..E		8/30 41	004 42 4091						W/ Mary 212 Prince George St, Annapolis	
5	Raymond S Schreiber, Jr	R/O	"	Bk 255 821 C1	B26641 PA		12/13 21	137 12 5507						W/ Kathleen 26 E 54th St, Brant Beach, NJ	
6	Earl B Lewis	Pssn	672	43z989870	D2 LA		12/24 09	459 03 3874						Sis/ Erma Lee Balque 1924 Stilwell Blvd Port Arthur, TX	
7	Herbert D Parsons	Q-/AB	516	14 z1189925		Gr. Cayman Islands A-1330912U	10/12 30	265 78 9796						W/ Leta 3555 Charles Ave Groves, TX	
8	~~Ernest Lorenzo~~	~~Cook & Steward~~	~~516~~	~~14~~	~~z459349~~	~~01~~ ~~III~~	~~6/21~~ 36	~~500 18~~ 0145	DID NOT SIGN					~~W/ Margaret 621 Shamrock Ave Port Arthur Tx~~	
9	Ruthven H Lee	*	516	14z688747		Ba 6748320 BUI	1/4 18	054 22 2397	Port Everglades, Florida	1-6-71	1/6			Dtr/ Monica 11 Coppola St, Nutley, NJ	
10	Clarence T Chladek	AB	504	41 D1 z1232981		Minn	5/5 42	469 48 2414						W/o/ Patricia Box 34 Claremont, Minn	
11	Robert C Arch	*	504	41 z480631		A-10180144 Honduras	4/21 18	263 34 9564						W/ Ina 708½ France St New Orleans, LA	
12	Harry L Davis	*	504	41 z779722	D2	Fla	10/4 28	266 24 9185						W/o/ Esther Davis R 1 Box 34 Pensacola, FL	
13	C. Smith	OS	399	78 z710882	D2	Miss	10/18 37	425 70 3626						Bro/ Polly Smith 1210 Anouthy St New Orleans, LA	
14	Derald D Duhon	*	399	78 z1202372		TX	2/5 43	449 62 9564						W/o/ Geraldine 3470 Ave C Beaumont TX	
15	Kenneth K Taylor	*	399	78 z223983	D5	RI	2/10 24	026 14 6462						W/o/ Eliza 1197 Robeson St Fall River, MA	
16	Francis Kopa	AB-Dk Mt.	573	28 z381811		MA	7/13 24	028 14 5410						W/o/ Theresa 9 ~~Pick Ave~~ Dudley MA FIRST AVE	
17	James H Richmond Jr	*	573	28 z554905	D1	CA	7/4 27	561 28 5133						W/ Etha 2450 65th St Port Arthur TX	
18	Gilbert O Miller	Ch Engr	See Rider	z171011	399597 PA		7/24 14	163 16 3965						W/Miriam 4021 Redwood Dr, ~~Port Arthur TX~~ Groves	
19	James A Harley	1st Asst	"	z523255	336693 GA		1/3 28	249 36 6898						W/Eula Mae 3101 Gardendal Dr Port Neches TX	
20	Theodore Gatza	2nd Asst	"	z188731	395637 Ill		8/14 12	456 12 8019						W/ Nancy 345 S Dewitt Vidor, TX	
21	Harold Mandel	3rd Asst	"	z061 40 7358	393352	Germany (Nat)	4/10 47	061 40 7358						Pa/ Gerhard 504 Portland Ave Mamaroneck, NY	
22	Culver Q Holt	Electrician	771	10z867593	D1 KY		9/2 26	403 28 5367						W/o/ Goldie Waddell 810 Edgewater Dr Eustis, Fl	
23	Willie F Jacquet	Pumpman	705	06 z958733	L.		11/7 28	436 32 2481						W/ Laura Mae 1224 E 15th St Port Arthur, TX	
24	Anthony Alves	2nd Pump man	705	06 z964488	..E		11/26 32	006 22 9028						W/ Erlene 42 Vesper St Portland, ..E	
25	Albert F Ryan	Oiler	504	41 z775504		BUI (Nat)	12/23 11	092 22 5617						W/ Alice 8702 N ~~Parkwood~~ Rockwood Ave Tampa, FL	
26	John Kardos	*	504	41 Z-215 334		MO.	3/25 22	130-10- 7477						W/Louise 8350 ~~NW~~ 84 Terr. Miami, Fla	
27	Timothy J O'Donovan	*	504	41z964818		..A	8/16 12	015 09 1199						Son/ Michael 168 Neil St Portland, ..E	
28	Martin J Urbin	Ch	654	33 z103882	D1	NJ	11/11 13	138 07 4111						Son/ George 25 W 16th St Bayonne, NJ	

Curtis J Urbin	Ch Wiper	554	73	z1030820	NJ	11/11	138	07	825 W 26th St Bayonne, NJ
Martin J Urbin						13	4111		
Louis C Poitenot	Pntry	504	41	z877560	LA	2/16	435	18	603 LaTour St Ville Platte LA
						16	3411		
Jacques H Blanchard	•	504	41	z698190	LA	3/12	434	34	819 9th St Lafayette LA
						28	1391		
Robert O Hedlock	•	504	41	z769 5D4	GA	6/20	113	12	508 Roberts St Warner Robins GA
						10	6722		
Pedro Cuevas	Wiper	463	05	z1213088	Honduras (Nat)	5/18	094	24	Colonia Atlantida Honduras C.A.
						27	6409		
Athens Walker	•	463	05	z1238782	Ala	12/24	424	58	2622 7th St Port Arthur TX
						44	9688		
Joseph A Baron	•	463	05	z1284520	RI	8/26	039	20	c/o Rose 85 XMA Libe Central Falls, RI
						32	5298		
Melvin James	Steward	675	22	z365080	LA	1/2	433	24	w/ Gertrude 911 West 17th St Port Arthur TX
						21	2411		
Joe W Thrower	Ch Cook	606	01	z669984	Ark	8/5	429	36	w/ Josephine 1701 E 19th St Port Arthur TX
						25	8575		
Junius McCall	2nd Cook	524	74	z804764 D2	LA	2/4	458	30	w/ Doris 825 E 18th St Port Arthur TX
						28	7560		
Harold P McLean	Galley-man	396	97	z434741413	A-13984887 Honduras	12/19	434	74	w/ Sigred Dolores 7 Minot St Roxbury MA
						32	1413		
Joseph H Boland	Messman	386	44	z8530303	So Car.	12/3	467	26	w/ Mattie Lucille 1918 17th St Port Arthur TX
						06	8735		
Thomas H Chastain, Jr	•	386	44	z266729655	NY	3/5	266	72	w/ Thos St 313 W Kirby St Tampa FL
						46	9655		
Philip Auster	Pantryman	386	44	z1132480	Poland (Nat)	4/20	096	07	Bro/ Louis 2920 260th St Floral Park, NY
						15	1948		
Maurice C LeBlanc	BRU	386	44	z1160930	LA	3/29	464	18	w/ Frankie 337 8th St Port Arthur TX
						09	8364		
Robert J.C. MURRAY	QM/ AB	516	14	Z-449 341-04	WASH	4/6	551-36-	1817	Mo. Nellie, 9334 56 Ave S, Seattle, Wash
						23			

State of Florida, Port of Port Everglades

On this 6th day of January 1971, personally appeared before me, a Shipping Commissioner in and for the said port, Verner CLYBURN Master of TEXACO ILLINOIS and the above-named seamen, severally known to me to be the same persons who executed the instruments above (shipping articles), who, each for himself acknowledged to me that he had read or had heard read the same; that he was by me made acquainted with the conditions thereof, and understood the same; and that, while sober, and (if in a state of intoxication, he signed it freely and voluntarily, for the uses and purposes therein mentioned.

Deputy

SHIPPING ARTICLES OF S/S Texaco Illinois PAGE No. -1-

PARTICULARS OF DISCHARGE

Place, Date, and Cause of Leaving Ship or of Death			Time of Service		Wages Earned		Deductions		Balance of Wages Paid on Discharge		Date Wages Paid and Release Signed	RELEASE	Attestation of Shipping Commissioner
Place	Date	Cause	M	D	Regular Wage							We, the undersigned seamen, do hereby, each one for himself by our signatures hereunto given in consideration of settlements made before the shipping commissioner, release the Master and owners from all claims for wages in respect of the voyage or engagement, and I, the Master, do make release each of the undersigned seamen from all claims, in consideration of this release signed by them.	
											1/21	J. Claybourn - Master	
			LINE NOT USED										
Shirley A Cooper NEW ORLEANS, LA	1/21/71	~~M/C~~	-	16	NO WAGES DUE (RIDER)							Shirley A Cooper	
John C Martin NO LA			-	16							21	John C Martin	W
Bruce H Doughty NO LA			-	16							21	Bruce H Doughty	W
Raymond S Schreiber, Jr NO LA			-	16							21	Raymond S Schreiber Jr	W
Earl B Lewis NO LA	1/[illegible]/71	M/C	-	16	156	11	41	40	208	31	21	Earl B Lewis	W
Herbert D Parsons NO LA			-	16	511	17	215	12	301	05	21	Herbert D Parsons	W
~~[illegible]~~			LINE NOT USED										
Ruthven H Lee NO LA			-	16	454	07	57	55	111	52	21	Ruthven H Lee	W
Clarence T Chladek NO LA			-	16	556	82	164	61	313	21	21	Clarence T Chladek	W
Robert C Arch NO LA			-	16	524	32	122	01	402	31	21	Robert C Arch	W
Harry L Davis NO LA			-	16	487	62	131	91	355	15	21	Harry L Davis	W
"O" "C" Smith NO LA			-	16	411	11	121	14	289	71	21	"O" "C" Smith	W
Gerald L Duhon ST EVERGLADES, FLA	1-6-71	HOSP	-	1	31	14	7	46	24	68		WAGES WITH CO.	
Kenneth K Taylor NO LA	1[illegible]/71	M/C	-	16	385	20	101	65	155	35	21	Kenneth K Taylor	W
Francis Kopac NO LA			-	16	702	79	182	62	520	17	21	Francis Kopac	W
James H Richmond, Jr NO LA			-	16	567	55	176	11	410	55	21	James H Richmond, Jr	W
Gilbert O Miller NO LA			-	16	NO WAGES DUE (RIDER)							Gilbert O Miller	
James A Harley NO LA			-	16								James A Harley	
Theodore Gatza NO LA			-	16								Theodore Gatza	
Harald Wandel NO LA			-	16								Harald Wandel	
Culver Q Holt NO LA	21 Jan 71	M/C	-	16	575	17	222	65	223	04	21	Culver Q Holt	W
Willie P Jacquet NO LA			-	16	510	52	216	41	411	13	21	Willie P Jacquet	W
Anthony Alves NO LA			-	16	512	96	289	44	223	52	21	Anthony Alves	W
Albert F Ryan NO LA			-	16	474	62	99	40	374	22	21	Albert F Ryan	W
John Kardos NO LA			-	17	451	53	59	40	392	13	21	John Kardos	W
Timothy J O'Donovan NO LA			-	16	733	82	211	11	520	63	21	Timothy J O'Donovan	W
Martin J Urban NO LA			-	16	411	26	102	17	311	01	21	Martin J Urban	W
Louis O Pontenot NO LA			-	16	456	62	111	16	340	46	21	Louis O Pontenot	W
Jacques H Blanchard NO LA			-	16	464	82	111	51	352	63	21	Jacques H Blanchard	W
Robert O Medlock NO LA			-	16	730	62	241	11	488	11	21	Robert O Medlock	W
Monico David NO LA			-	16	305	66	104	30	201	36	21	Monico David	W
Athens Walker												Athens Walker	

| | | |

DEFENDANT'S EXHIBIT B

LETTER DATED JANUARY 31, 1971

SHIP'S COMMITTEE
S.S. TEXACO ILLINOIS
TEXACO INC. MARINE DEPT.
P. O. BOX 1028; PORT ARTHUR, TX 77640

3/25/72

125

National Maritime Union of America AFL-CIO
36 Seventh Avenue
New York, New York 10011

Baltimore, Maryland
31 January 1971

ATTENTION: NATIONAL OFFICE Joseph Curran, President; Vice-Presidents, T.J. Walker- Contract Enforcer, et al.

SUBJECT: Grevience concerning Intercoastal Shipping Articles.

Dear Sirs and Brothers:-

At Taft, Ascention Parish, Louisiana, we the unlicensed crewmembers of the S.S. TEXACO ILLINOIS were paid off under Intercoastal Articles on 21 January 1971, of less than 30 (thirty) days duration.

The TEXACO ILLINOIS crew signed Intercoastal Articles on 6 January 1971 at Port Everglades, Florida- to precede to the West Coast and pay off on that coast, but was diverted to go instead to Trinidad, B.W.I. and then pay off at Taft or The Loup, Louisiana.

The Articles of Agreement said as follows: "Office of the U.S. Shipping Commissioner for the Port of Miami, Florida 6 January 1971. IT IS AGREED between the master and seamen, or mariners, of the S.S. TEXACO ILLINOIS of which Verner Claybourn Lic. 356364, MMD # Z300056-D1 is present master, or whoever shall go as master, now bound from the Port of Port Everglades, Florida, to one or more ports in the Gulf and/or Carribean and Panama and thence to one or more ports of the Pacific Coast of the Continental United States, exclusive of Hawaii and Alaska, to a final port of discharge on the Pacific Coast of the United States, for a period of time not to exceed ninety (90) days."

Patrolman Brother Maurice met this vessel at time of payoff at Taft, Louisiana at time of payoff and consulted with Agent S.D. George about whether or not this unlicensed crew of the TEXACO ILLINOIS were antitled to thirty (30) days of penalty pay, because of alleged violation of the articles. But Brother George gave his opinion that there was no beef and penalty pay would not be possibly payable. But he would consult with the union attorneys about this beef.

The Texas Company was penalized thirty (30) days in a similiar beef with the S.S. TEXACO GEORGIA about a year ago in the Port of Port Arthur, Texas about their articles. Patrolman Brother Charlie Walker did handle the TEXACO GEORGIA beef and got reminaration for the unlicensed crew then.

The Ship's Committee and unlicensed crewmembersin the General NMU Meeting of 26 January 1971 aboard the TEXACO ILLINOIS do not concur with the decision rendered from the Port of New Orleans, Louisiana on the above beef and so request that the NATIONAL OFFICE render a final decision on this beef.

The Texas Company consulted the Office of the Chief Shipping Commissioner's at the Port of New Orleans. The company ruled that there was no violation of the articles. Therefor there would be no penalty payment. The unlicensed crewmembers of this vessel feel that this beef was only settled between the company and the Shipping Commissioner's offices. Not the company nor the National Maritime Union.

Fraternally yours,

J.H. Baland B.K. 40492
Albert F. Ryan 66590.
Richard Mowray 46808

DEFENDANT'S EXHIBIT C

MINUTES OF GENERAL MEETING, JANUARY, 1971, OF SHIP'S CREW

NATIONAL MARITIME UNION OF AMERICA AFofL-CIO

GENERAL MEETING FOR THE MONTH OF JANUARY 1971

ABOARD THE S.S. TEXACO ILLINOIS

General membership meeting was called for at 1815 hours (6:15P.M.) E.S.T. to order by Ship's Chairman Beland.

1. Nomination of Chairman: BOWLAND, MORRIS, RICHMOND, KLVAS,
A D D D

MSC to accept. Beland by acclimation.

2. Recording Secretary: MURRAY, LEE HOLT, KRAFT
D D D A

MSC to accept Kraft by acclimation.

3. Reading of previous minutes; MSC to post.

4. Ship's Committee's Report:
(a) Deck 10 Grp I , 2 Grp 2, No beefs, MSC to accept.
(b) Engine 12 Grp I , 1 Grp 2, No beefs, MSC to accept.
(c) Steward 6 Grp I , 2 Grp 2. no beefs, MSC to accept.

5/ Members in attendence: 30 (thirty).

6. Treasurers Report; (M. Urban) SAD: Last Meeting $323.33
New in Treasury.....This Meeting $325.93
Less ..$2.60

One member missed ship and owes $25.00 to Treasury.
MSC to accept.

7. Union Conditions: Fair. MSC to Accept.

8. Committee's Report. None MSC to Accept.

9. Reading of Communications. MSC to Post.

10. Unfinished Business None. MSC to Accept.

11. New Business-
(A) Man missed ship owes $25.00 to Ship's Treasury, Brother B. De John. Another crewmember in attendance at meeting owes Brother De John $50.00. Offered to pay Treasury $25.00 for missing Brother. MSC to Accept.

(B) Discussion to seek a higher ruling from National Office from Port of New Orleans on old money beefs regarding Intercoastal Articles being broken less than 30 (thirty) days. Penalty payment requested for 30 (thirty) days, because Intercoastal Articles said to pay off on Pacific Coast of the United States, but ship was diverted by office to Port Arthur to go to Trinidad, B.W.I. and pay off in Taft, Louisiana and resign on Coastwise Articles. Motion on the floor to write President Joe Curran and Contract Enforcer T.J. Walker about the undatisfactory settlement of this beef in New Orleans by Agent S.D. George, and have the National Office finally rule in favor or against the receivement of Penalty Payment for 30 (thirty) days,

Defendant's Exhibit C

N.M.U. AFL*CIO General Meeting for month of January 1971 aboard

the S.S. TEXACO ILLINOIS, Continued. Sheet 2.

11. New Business (Continued)
(B)(Re- Penalty payment for breaking of Ship's Articles Intercoastal) (Continued)....
A raising of hand vote was taken.
29 members voted in favor thereof.
1 member voted against in opposition.
Brother P. Auster, Bk No. 4848
MSC to Accept New Business Report.

12.(C). Two Chairs missing in mess hall of unlicensed personnel. Requested to have these two missing chairs replaced. MSC to Accept.

(D). There are three very dangerous situations on Deck,
i. Ancher Windlass forward. Throttle Valve does not work.
ii. Topping Winch for Gangway and Cargo Hoses. Clutch Handle sticks and is hazzardous in present condition.
iii. Fire Hydrant Valves of which hot sea water comes through for Butterworth or Pyrate heaters and machines to wash tanks, will not turn off effectively. One man had feet burned from hot sea water because of defective valve. Have each valve checked and defective valves overhauled.

MSC to contact Patrolman and Texaco on these three items.

MSC to Accept above and entire New Business Report.

12. Good and Welfare. Brother La Blanc, B.R. Utility wishes to relinquish trusteeship over the ship's iron and Brother Gallimore, Steward agreed to accept trusteeship over the Ship's Iron. MSC to Accept.

13. Motion to Adjurn. MSC to Accept. Meeting adjurned at 1650 hours (6:50 PM. E.S.T.)

J H Boland. J. H. Boland, Book No. 40492. Ship's Chairman

Wm F. Kraft W. Kraft, Book No. 69018. Recording Secretary

DEFENDANT'S EXHIBIT E

COMPILATION

Name	Continuous Service Aboard Sea. Illinois		Left Vessel	
	Date	Port	Date	Port
Alves, Anthony	12-17-70	Boston	5-24-71	Beaumont Shipyard
Arch, Robert C.	8-30-68	Pt. Arthur	4-23-71	✓
Auster, Philip	7-3-70	✓	2-16-71	Kentville
Baron, Joseph A.	11-14-70	Boston	2-16-71	✓
Blanchard, Jacques H.	7-30-70	Pt. Arthur	4-23-71	Beaumont Shipyard
Boland, Joseph H.	4-16-70	✓	4-23-71	✓
Chastain, Jr., Thomas H.	8-3-70	Tampa	4-23-71	✓
Chladek, Clarence A.	12-10-70	Pt. Arthur	1-23-71	Loup
David, Monica	10-31-70	Bayonne	4-23-71	Beaumont Shipyard
Davis, Harry L.	11-23-70	Pt. Arthur	2-8-71	Pt. Everglades
Fontenot, Louis H.	12-10-70	✓	4-11-71	✓
Holt, Culver A.	12-30-70	✓	2-23-71	✓
Jacquet, Hallie P.	11-7-70	✓	1-22-71	Loup
James, Melvin	5-1-70	✓ Pt. Everglades	1-22-71	Loup
Kardas, John	1-5-71	Providence	4-23-71	Beaumont Shipyard
Kopas, Francis C.	3-10-62	Pt. Arthur		
LeBlanc, Maurice C.	9-25-65	Portland	1-31-71	Baltimore
Lee, Ruthven H.	3-14-63	Pt. Arthur	6-15-71	Beaumont Shipyard
Lewis, Earl B.	4-4-69	✓	1-24-71	Loup
Medlock, Robert O.	6-2-70	Pt. Everglades	4-?-71	Boston
Murray, Robert J. C.	1-6-71	Pt. Arthur	4-23-71	Beaumont Shipyard
McCall, Junious	7-[illegible]-70	Boston	3-3-71	Providence
McLean, Harold A.	12-17-70	Chelsea	3-3-71	✓
O'Donovan, Timothy J.	12-2-70	Pt. Everglades	4-23-71	Beaumont Shipyard
Parsons, Herbert D.	3-31-66	Pt. Arthur	2-8-71	Pt. Arthur
Richmond, James H.	3-12-70	Pt. Arthur	3-12-71	✓
Ryan, Albert J.	11-[illegible]-54	✓	2-8-71	✓
Smith, O.C.	12-9-69	✓	2-8-71	✓
Urban, Martin J.	10-5-65	Bayonne	1-31-71	Baltimore
Taylor, Kenneth K.	12-1-70	Providence		
Thrower, Jack H.	7-29-70	Pt. Arthur		
Walker, Athens	11-23-70	✓	3-18-71	Jacksonville

Court Press Form No. 2-Affidavit.
H.15

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

EARL B. LEWIS, ET AL.,

Plaintiffs-Appellees,

against

TEXACO INC.,

Defendant-Appellant.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes and says that he is over the age of 18 years. That on the 25th day of July, 1975, he served one copies of the Joint Appendix on Abraham E. Freedman, Esq.

the attorney for the Plaintiffs-Appellees by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a Branch Post Office regularly maintained by the Government of the United States at 90 Church Street, Borough of Manhattan, City of New York, directed to said attorney at No. 346 West 17th Street, New York ( ) N. Y., that being the address designated by him for that purpose upon the preceding papers in this action.

David F. Wilson

Sworn to before me this
25th day of July, 1975.

Courtney J. Brown

COURTNEY J. BROWN
Notary Public, State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1976